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## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1945

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No. 418

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES  
OF CHRISTOPHER ENGINEERING COMPANY,  
AND NATIONAL AIRCRAFT CORPORATION,  
PETITIONER,

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE  
OF NATIONAL AIRCRAFT CORPORATION

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No. 419

NATIONAL AIRCRAFT CORPORATION,  
PETITIONER,

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE  
OF NATIONAL AIRCRAFT CORPORATION

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR CERTIORARI FILED SEPTEMBER 10, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944.

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No.

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IN THE MATTER OF: NATIONAL AIRCRAFT CORPORATION, A CORPORATION, DEBTOR.

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JEROME F. DUGGAN, TRUSTEE OF THE ESTATE OF  
CHRISTOPHER ENGINEERING COMPANY, A CORPORATION,  
*Petitioner,*

*vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Respondent.*

---

NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Petitioner,*

*vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.

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## TRANSCRIPT OF RECORD

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In the  
**United States Circuit Court of Appeals**  
**For the Seventh Circuit**

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IN THE MATTER OF: NATIONAL AIRCRAFT CORPO-  
RATION, A CORPORATION, DEBTOR.

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JEROME F. DUGGAN, TRUSTEE OF THE ESTATE OF  
CHRISTOPHER ENGINEERING COMPANY, A CORPORATION,  
*Appellant,*

No. 8655.

*vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Appellee.*

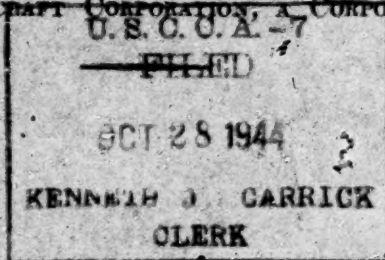
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NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Appellant,*

No. 8656.

*vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Appellee.*



Appeals from the District Court of the United States for  
the Southern District of Indiana, Indianapolis Division.

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TRANSCRIPT OF RECORD FILED AUG. 8, 1944.  
PRINTED RECORD.

In the  
**United States Circuit Court of Appeals**  
**For the Seventh Circuit**

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IN THE MATTER OF: NATIONAL AIRCRAFT CORPORATION, A CORPORATION, DEBTOR.

---

JEROME F. DUGGAN, TRUSTEE OF THE ESTATE OF  
CHRISTOPHER ENGINEERING COMPANY, A CORPORATION,  
*Appellant,*  
**No. 8655.** *vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Appellee.*

---

NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Appellant,*  
**No. 8656.** *vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Appellee.*

---

Appeals from the District Court of the United States for  
the Southern District of Indiana, Indianapolis Division.

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1     Pleas of the District Court of the United States for the Southern District of Indiana, at the United States Court House in the City of Indianapolis, in said District, before the Honorable Robert C. Baltzell, Judge of said District Court.

In the Matter of National Aircraft Corporation Bankrupt.	}	No. 9401 in Bankruptcy.
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Be It Remembered that heretofore to-wit: at the May Term of said Court, on the 18th day of May, 1944, Before the Honorable Robert C. Baltzell, Judge of said Court the following proceedings in the above case were had, to wit:

The following is a copy of the Referee's Certificate On Review filed with the Clerk on May 18, 1944 and papers handed up with said certificate:

2     IN THE DISTRICT COURT OF THE UNITED STATES  
for the Southern District of Indiana,  
Indianapolis Division.

In the Matter of  
National Aircraft Corpo-  
ration,  
Bankrupt.

}     No. 9401 In  
Bankruptcy.

REFEREE'S CERTIFICATE ON REVIEW.

(Filed, May 18, 1944. Albert C. Sogemeier, Clerk.)

To the Honorable Robert C. Baltzell, Judge of Said Court:

I, Carl Wilde, one of the Referees in Bankruptcy of this Court, do hereby certify that the above cause was referred to me and that, in the course of its administration before me, the following question arose:

Whether sales of assets made by the Trustee in pursuance to an order entered by me, after hearing upon notice to all interested parties including Jerome F. Duggan, Trustee of Christopher Engineering Company, Joseph M. Brown, Secretary and Treasurer of the bankrupt and owner of one-half of its capital stock, and without objection on the part of said Duggan, Trustee, or said Brown, or any other interested party, should be approved and confirmed, the aggregate sales price of such assets being approximately \$9,000.00 in excess of the appraised value thereof and approximately \$16,000.00 in excess of the value placed thereon by said Brown in a computation prepared by him, of which a copy was furnished to the Referee.

3     On May 3, 1944 I entered an order approving a report filed by the Trustee of the sales of assets sold by him at public sale pursuant to order entered on April 6, 1944, and approving and confirming the sales reported by him, with certain exceptions, which order is in the words and figures following:

4 , IN THE DISTRICT COURT OF THE UNITED STATES.  
(Caption—9401)

At the continued hearing held May 2, 1944, pursuant to order entered herein on April 25, 1944, for the consideration of the report of sale filed by James C. Sansberry, Trustee in Bankruptcy herein, on April 21, 1944, the said Trustee appeared in person and by Isidore Feibleman of Bamberger & Feibleman, his attorneys, and the United States appeared by Paul A. Pfister, Assistant United States Attorney, and no creditors or other parties in interest appeared either in person or by attorney, and no cause was shown why the said report of sale should not be approved and the sales to the high bidders as therein reported, confirmed; and the Referee, having considered the evidence and being advised, finds that the assets offered for sale at the public sale held on April 20, 1944 are in the custody and control of the United States District Court for the Southern District of Indiana, and that no application for the release of said assets has been filed in said Court, and that title to said assets is in said

5 James C. Sansberry, as Trustee in Bankruptcy of the above named bankrupt; and the Referee further finds that said assets being in the custody and control of said Court, and the matter having been referred to the Referee, it is the duty of the Referee to determine whether or not said report of sale should be approved and the sales to the high bidders for the assets of the bankrupt confirmed, and that if said sale was fairly held and adequately attended, and said bids are adequate and reasonable, the sales to said bidders should be confirmed; and the Referee further finds that the aggregate amount bid for the property offered is substantially in excess of the appraised value thereof and very greatly in excess of the value fixed thereon by Joseph M. Brown, Secretary-Treasurer of the bankrupt, in his testimony at the first meeting of creditors, and that, with the exceptions hereinafter noted, said sales should be approved and confirmed; and accordingly, it is now

Ordered that said report of sale of the Trustee and the acts and doings of said Trustee by him therein reported be, and they are, approved; that the sale of the real estate described in said report, to Charles Green of Chicago, Illinois, for the sum of \$18,750.00 be, and it is, approved

and confirmed; that the sale of the one ton automobile truck to DeKalb Seed Company of DeKalb, Illinois, for \$1,350.00 be, and it is, approved and confirmed; that 6 the sale of the one and one-half ton truck to L. Hoffman of Peru, Indiana, for the sum of \$2,000.00 be, and it is, approved and confirmed; that the sale of the Airplane, referred to in the report of sale as Parcel 4, to F. Wambaugh of Elkhart, Indiana, for the sum of \$575.00 be, and it is, approved and confirmed; and that the sales of the personal property, when offered piecemeal, as reported by the Trustee and as shown in detail in the report of the auctioneer to the various high bidders therefore, be, and they are, approved and confirmed with the following exceptions: The sale of a heater, known as Lot No. 530, in the sum of \$20.00; the sale of the good will, which was included in Parcel No. 6 but was not designated by lot number, in the sum of \$140.00; the sale of said heater and of said good will being hereby expressly disapproved and the Trustee ordered to reject the bids therefor; the sales of all of said assets hereinabove confirmed to be free and clear of all liens and encumbrances except the property taxes upon said real estate for the year 1944, payable in 1945, to which said real estate is sold subject, all valid and subsisting liens and encumbrances of which said assets are sold free and clear to follow and attach to the proceeds derived from the sale thereof and to be paid therefrom.

It Is Further Ordered that the Trustee be, and is, 7 upon receipt of the purchase price of the assets sold and the sale whereof is herein confirmed, authorized and directed to deliver said property to the respective purchasers thereof and to execute such instruments as may be necessary to evidence the transfer of title thereto.

Dated at Indianapolis, Indiana, this the third day of May, 1944.

Carl Wilde,  
*Referee in Bankruptcy.*

CC  
James C. Sansberry,  
Conrad S. Arnkens,  
Bamberger & Feibleman,  
Paul A. Pfister,  
William C. Moore,  
Philip B. O'Neill,  
Hubert Hickam.

8 On May 10, 1944, Jerome F. Duggan, subscribing himself as Trustee of the Estate of Christopher Engineering Company, a corporation, and Trustee of the Estate of National Aircraft Corporation, a corporation pending in reorganization proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, filed in the office of the Referee, by Phil O'Neill, attorney for said Duggan, Trustee of Christopher Engineering Company, his petition for the review of said order and also his petition for an order staying the enforcement thereof. Said petition for review was not filed in duplicate as required by Rule 19 of the Rules of the District Court of the United States for the Southern District of Indiana, and was not accompanied by brief in support thereof, as required by said Rule, and no copy of said petition for review was served upon James C. Sansberry, Trustee in Bankruptcy herein, or upon his attorneys, as required by Section 39c of the Bankruptcy Act of 1898, as amended. Nevertheless, in order to permit the matter to be brought before the Judge of the United States District Court for the Southern District of Indiana, despite the failure of said petitioner to comply with the applicable rule of Court and the provisions of the Bankruptcy Act, I granted the review.

9 On May 10, 1944, a petition for review of said order of May 3, 1944, purporting to be the petition of National Aircraft Corporation, by J. M. Brown, Secretary-Treasurer of said corporation, was filed by said Phil O'Neill, which petition likewise was not filed in duplicate as required by the Rule of Court aforesaid, and was not accompanied by brief as required by said Rule. No copy of said petition for review was served upon either the Trustee in Bankruptcy or his attorneys, but said Phil O'Neill, attorney for said Duggan, Trustee, and for said J. M. Brown, met said Trustee in Bankruptcy upon the street in Anderson, Indiana, and told him that he had filed such a petition and that the Trustee could borrow his office copy thereof to make a copy for his own use. In this matter also, despite the failure of the petitioner to comply with the applicable rule of Court and the provisions of the Bankruptcy Act, and despite the obvious incongruity of a corporation, which has been adjudicated a bankrupt and for whom a Trustee in Bankruptcy is acting and for



whom, according to the petition of Duggan, Trustee, a Trustee has been appointed in reorganization proceedings in bankruptcy, filing independently a petition for review. I granted the petition.

This certificate is filed in pursuance of the orders entered by me granting said petitions for review. Since the same order is involved in both petitions, I am filing only the one certificate, covering both petitions.

10

### Summary of the Evidence

The first meeting of creditors in this case was held on March 7, 1944. At that first meeting of creditors Joseph M. Brown, Secretary-Treasurer of the bankrupt, appeared and was examined under oath by me and by representatives of creditors present at the meeting. Brown testified that the bankrupt corporation was originally organized with local capital at Elwood, Indiana, and that in December, 1942, he and A. B. Christopher purchased all of its capital stock. Brown further testified that while the certificates were turned over to Jerome F. Duggan, Trustee of Christopher Engineering Company in a reorganization proceeding in St. Louis, there is no reason that he knows of why such capital stock should be considered as the property of Christopher Engineering Company instead of the property of himself and Christopher, individually. Brown testified that he and Christopher paid \$30,000.00 cash for the stock and put up an additional \$15,000.00 with the Citizens Bank of Elwood as guaranty for a \$50,000.00 loan with the Reconstruction Finance Corporation which, as he and Christopher understood, was about to foreclose; and that, in addition, he and Christopher took up \$13,000.00 in notes which the bankrupt corporation had outstanding. Brown testified that the total amount which he and Christopher paid was \$58,000.00,

but the bankrupt later repaid \$28,000.00 thereof.

11 Brown also testified that the corporation was, at the time of the first meeting, still indebted to the government to the extent of \$152,000.00, but was vague as to the details, attempting to describe a revolving fund arrangement between the corporation and the government. He estimated the total liabilities of the bankrupt at \$429,000.00 at that time. A computation which he had pre-

pared, and copies of which were furnished to the Trustee in Bankruptcy by said Brown, showed total assets of \$126,569.49. When asked whether the corporation was insolvent at the time he was giving his testimony, in the sense that the aggregate of its liabilities was in excess of its assets, Brown answered: "It looks to me like it is insolvent, but I would not care to express myself." Brown further testified that his stock in the bankrupt corporation was then in his name and not in the name of Christopher Engineering Company, but that he had pledged it to one Landau to secure a debt, putting up the stock as collateral.

At the first meeting of creditors Brown, who had present with him as attorneys, Phil O'Neill of Anderson, Indiana, who was also attorney for Duggan, Trustee, and Noah Weinstein and Sherman Landau, of St. Louis, Missouri, offered no objection to the appointment of a Trustee. Mr. O'Neill asked the representatives of creditors present whether they would be interested in having the assets of the bankrupt sold to a new corporation to be organized under the laws of the State of Indiana, it being proposed that the directors should be Sansberry, (the Trustee in Bankruptcy) Arnkens, (one of the attorneys for the Trustee in Bankruptcy) and O'Neill, (the attorney for Brown and for Duggan, Trustee). I examined a draft of the proposed plan, which contemplated the ultimate transfer of the assets from the corporation to be organized as aforesaid, to a second corporation. Brown was the moving spirit in this proposed plan, which, after examination and consultation with Brown's attorney, I pronounced unlawful, inequitable and one offering no security to creditors.

In stating this summary of the evidence, it is necessary to refer to matters of record. The involuntary petition in bankruptcy in this case was filed on January 21, 1944. A petition for the appointment of a Receiver in Bankruptcy was filed and was referred to me as Referee. I held a hearing at which Duggan, Trustee for Christopher Engineering Company, appeared by Hubert Hickam of Indianapolis, his attorney. The matter of the appointment of a Receiver was taken under advisement. On February 7, 1944, no answer to the involuntary petition having been filed and the statutory period having elapsed, the involuntary petition being unopposed, an order of adjudication was entered. Thereafter, on February 8, 1944, I entered

an order appointing James C. Sansberry as Receiver  
13 in Bankruptcy. No petition for the review of my  
order appointing a Receiver in Bankruptcy was filed  
although notice was given to Mr. Hickam, as attorney for  
Duggan, Trustee.

At the first meeting of creditors held on March 7, 1944,  
as aforesaid, Mr. Sansberry was elected Trustee in Bank-  
ruptcy and qualified as such by filing his bond in the  
amount required.

On March 21, 1944, Sansberry, Trustee, filed his peti-  
tion for an order authorizing him to offer for sale and to  
sell the tangible personal property and the real estate  
therein described, at public sale. In order to give all in-  
terested parties an opportunity to be heard in the matter,  
I refrained from entering an order of sale at that time,  
but entered an order directing that a meeting of the cred-  
itors be held on April 4, 1944, for the purpose of con-  
sidering said petition of the Trustee, directing that cred-  
itors and other parties in interest appear and show cause,  
if any they have, why said petition of the Trustee should  
not be granted and an order of sale entered as by him  
prayed. I further directed that notice of said meeting  
be sent to Jerome S. Duggan, Receiver for Christopher  
Engineering Company, Inc., and also to Pence, O'Neill &  
Diven, as attorneys for J. M. Brown, Secretary-Treasurer  
of the bankrupt. Such notices were sent to said parties.

At the meeting of creditors held on April 4, 1944, a num-  
ber of interested parties, including James C. Sansberry,

Trustee in Bankruptcy and his attorneys, the United  
14 States District Attorney representing the United  
States Army Air Force and the Collector of Internal  
Revenue, and others, appeared. The only objection to the  
sale was one filed by the United States Army Air Force,  
and such objection pertained only to certain personal prop-  
erty which was claimed by the United States Army Air  
Force, which asked that it be relinquished to it. An order  
directing the surrender of said property to the United  
States Army Air Force was entered. It was expressly  
stated on behalf of the United States Army Air Force  
that there was no objection to the entering of an order for  
the sale covering the other property of the bankrupt.  
Neither Duggan, Trustee, nor J. M. Brown, although noti-  
fied of the proceedings, appeared, and no objection what-  
ever was made to the entering of an order of sale.

On April 6, 1944, I entered an order directing that the real estate and all of the personal property of the bankrupt, with certain exceptions, be offered for sale at public sale on April 20, 1944, and granted the petition of the Trustee to employ an auctioneer to conduct such sale. Notice of the entering of the order of sale was sent to all known interested parties, including Duggan, Trustee, and Brown, on April 10, 1944. No petition for the review of the order of sale was filed. Immediately upon the entering of the order of sale, the Trustee and his attorneys, 15 and the auctioneer employed by the Trustee, and certain persons who had been employed by the Trustee to help preserve and protect the property of the bankrupt, commenced intensive preparations for the sale and very considerable expense was incurred in such preparations. Among the expenses incurred, in addition to those incident to lotting and parceling the personal property and preparing it for sale, was advertising, the sale being given paid publicity in newspapers in Chicago, Illinois, and Fort Wayne, Indianapolis, Marion, Muncie, Anderson, Elwood and Kokomo, Indiana. Some thirty-seven hundred circulars were sent to prospective purchasers by the auctioneer.

On the evening of April 19, 1944, the evening immediately preceding the sale, Brown notified Sansberry, Trustee, that he had obtained an injunction against the holding of the sale from the Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, in which Court the reorganization proceedings of Christopher Engineering Company were then pending. Brown showed Sansberry, Trustee, a purported copy of such injunction. According to such copy the injunction decree contained a finding that National Aircraft Corporation, the above named bankrupt, is a wholly owned subsidiary of Christopher Engineering Company, a finding directly at variance with the testimony of Brown at the first meeting of creditors. A 16 certified copy of the petition of National Aircraft Corporation, as a subsidiary of Christopher Engineering Company, filed in the proceedings for reorganization of the company last named in the Federal District Court in Missouri, and signed by Brown, recites that: "The majority of the capital stock of this subsidiary corporation having power to vote for the election of directors is

owned directly by the debtor or indirectly through nominees", there being no allegation that the National Aircraft Corporation is a wholly owned subsidiary of Christopher Engineering Company. According to the testimony of Brown at the first meeting of creditors of the bankrupt, National Aircraft Corporation is neither a wholly owned subsidiary of Christopher Engineering Company nor is a majority of its stock owned by that company.

The order directing the sale of the assets on April 20, 1944, directed that such sale commence at nine-thirty o'clock a. m. Just immediately prior to the beginning of the sale, James C. Sansberry, Trustee in Bankruptcy herein, and Adolph J. Winternitz, the auctioneer employed by the Trustee under my order, were served with copies of the injunction which Brown had exhibited to Sansberry on the preceding evening. Sansberry, Trustee, proceeded with the sale as he had been ordered to do. There were between three and four hundred prospective purchasers present and the bidding was spirited and the competition among bidders keen. The result was that the aggregate bids were slightly in excess of \$55,000.00 for assets which had been appraised at approximately \$45,000.00.

On April 21, 1944, James C. Sansberry, Trustee in Bankruptcy, filed his report of sale alleging that the sale was an advantageous one and should be approved and confirmed by the Court, and that all parties attending the sale had been notified that the matter of confirmation would come up before the Referee on April 25, 1944, at ten o'clock a. m., the Trustee praying that his acts in connection with the sale be approved by the Court, that the report be set down for hearing and that, after consideration and after due notice to the bankrupt and its officers, and to Duggan, Trustee, that the sales be approved and confirmed.

Upon the filing of this report, I entered an order assigning the matter of the approval and confirmation of the sales reported by the Trustee for hearing at ten o'clock a. m., on Tuesday, April 25, 1944, in Room 245 Federal Building, Indianapolis, Indiana, and requiring Duggan, Trustee of Christopher Engineering Company, J. M. Brown and all other persons in interest to appear and show cause why the sales reported by the Trustee should



not be approved and the Trustee, upon receipt of the 18 purchase price of the various items of property, authorized to deliver the same to the respective purchasers. Copies of the order assigning the matter for hearing were sent by mail to Duggan, Trustee, Brown, in care of Pence, O'Neill & Diven, his attorneys, (Phil O'Neill of said firm having, incidentally, been a bidder at the public sale held by the Trustee on April 20, 1944, for the assets in bulk, but such bid being approximately \$10,000.00 lower than the aggregate of the bids for the real estate offered separately and the personal property in lots and parcels) Hubert Hickam, attorney of record for Duggan, and Paul A. Pfister, Assistant United States Attorney, representing the United States Army Air Force.

At the time and place fixed for the hearing the Trustee appeared in person and by attorney, and the United States appeared by Paul A. Pfister, Assistant United States Attorney, but neither Duggan, Trustee, nor Brown, appeared, either in person or by attorney.

At the hearing of April 25, 1944, it was suggested that the Trustee and Isidore Feibleman of Bamberger & Feibleman, his attorneys, would, if thought advisable, proceed to St. Louis, Missouri, to ascertain the facts surrounding the entering of the injunction order, and thereupon continued the hearing until ten o'clock a. m., on Tuesday, May 2, 1944.

At the hearing held on May 2, 1944, the Trustee 19 and his attorneys appeared and said Paul A. Pfister,

Assistant United States Attorney, appeared, and no other parties in interest appeared and no objections to the approval and confirmation of the sales reported by the Trustee were filed. On the contrary, said Paul A. Pfister, appearing on behalf of both the United States Army Air Force and the Collector of Internal Revenue, who has large claims against the bankrupt's estate, recommended the approval and confirmation of the sales reported by the Trustee. The Trustee and his attorney, Isidore Feibleman, reported that they had made some examination of the records in St. Louis and had talked with various parties there but had not submitted themselves to the jurisdiction of the District Court for the Eastern Division of the Eastern Judicial District, all conferences having been entirely informal.

On the day following the continued hearing of May 2, 1944, I entered the order which the petitions for review allege to be erroneous.

### Findings of Fact.

I find the facts to be as follows:

The bankrupt is an Indiana corporation. It was engaged in the business of manufacturing airplane parts and its principal place of business and all of its assets were located at Elwood, Indiana. Upon an involuntary petition in bankruptcy filed on January 21, 1944, and to which no answer was filed although Jerome F. Dugan, Trustee of Christopher Engineering Company, was advised of the filing of said involuntary petition, an order of adjudication was entered on February 7, 1944.

After due and proper notice to all creditors and known parties in interest, the first meeting of creditors of the bankrupt was held in Indianapolis, Indiana, on March 7, 1944, and at said first meeting of creditors Joseph M. Brown, Secretary-Treasurer of the bankrupt, appeared and was examined under oath by the Referee and by various creditors and other parties in interest. The National Aircraft Corporation, at the time of the filing of the petition in bankruptcy against it, and at all subsequent times, was insolvent, the aggregate of its property at a fair valuation being insufficient in amount to pay its debts. The capital stock of the bankrupt corporation was the property of J. M. Brown and A. B. Christopher and said bankrupt corporation was not a subsidiary of Christopher Engineering Company.

21 Prior to bankruptcy, approximately \$15,000.00 had been deducted by the bankrupt from wages and salaries due its employees on account of Social Security and withholding taxes, and approximately \$1,400.00 had been retained from the pay of employees for the purchase of war bonds.

On February 8, 1944, James C. Sansberry of Anderson, Indiana, was appointed Receiver in Bankruptcy for the bankrupt. At that time there was approximately \$100.00 cash on hand and the \$15,000.00 that had been deducted from wages and salaries, as aforesaid, and the \$1,400.00 which had been deducted for the purchase of war bonds,

were not on hand and were not then, nor had been for a long period of time prior thereto, available for the payment of withholding and Social Security taxes and the purchase price of such war bonds.

The United States Army Air Force had been endeavoring for a long period of time, prior to the filing of the petition in bankruptcy, to obtain information from the books and records of the bankrupt concerning its transactions in connection with a contract between the bankrupt and the United States Army Air Force, and in connection with a subcontract with Howard Aircraft Corporation. The 22 books of the bankrupt were fragmentary and incomplete. No trial balance had been prepared since July 31, 1942. The employees of the bankrupt had not received their wages for a period of three weeks prior to the filing of the petition in bankruptcy.

Certain interests, known as the Christopher interests, including J. M. Brown, A. B. Christopher, Christopher Engineering Company, and Christopher Aircraft Corporation, are in the aggregate, indebted to the bankrupt in a net sum of approximately \$37,000.00.

On March 7, 1944, James C. Sansberry was appointed Trustee in Bankruptcy of and for the above named bankrupt. On March 10, 1944, said James C. Sansberry qualified by filing his bond as required, and said James C. Sansberry is now the duly appointed, qualified and acting Trustee in Bankruptcy. The sales of property made by said Trustee were made in accordance with the orders of the Referee in Bankruptcy to whom this proceeding was duly referred by the Judge of the United States District Court for the Southern District of Indiana. Since the appointment of the Receiver in Bankruptcy several thousand dollars have been expended in preserving 23 the assets and property of the bankrupt and in preparing the same for sale and in effecting the sale thereof.

Prior to the filing of the petitions for review aforesaid, no petitions or any other pleadings had been filed in the office of the Referee or in the United States District Court for the Southern District of Indiana by Jerome F. Dugan, Trustee of Christopher Engineering Company, or by J. M. Brown, or by any other of the parties known as the Christopher interests, or by the bankrupt itself, although an order had been entered requiring the filing of sched-

ules by the bankrupt, notice whereof was given to said Joseph M. Brown, prior to the first meeting of creditors.

The public sale held by the Trustee on April 20, 1944, was widely publicized and well-attended, the bidding was spirited and the competition keen, and the bids reported by the Trustee were, in the aggregate, considerably in excess of the appraised values of the property offered for sale, and the sales to such bidders were advantageous and to the best interest of the estate and the creditors of the bankrupt.

I hand up herewith, for your information, the following:

1. Copy of findings of fact and conclusions of law, made and entered February 1, 1944, after hearing upon the petition for the appointment of a Receiver in Bankruptcy;
2. Copy of order entered February 1, 1944, deferring appointment of Receiver and restraining removal of assets;
3. Copy of order entered February 8, 1944, appointing James C. Sansberry Receiver in Bankruptcy;
4. Copy of Trustee's petition for sale of real and personal property, filed March 21, 1944;
5. Copy of order for hearing upon Trustee's petition to sell, notice whereof was given to Jerome S. Duggan, Receiver for Christopher Engineering Company, Inc., St. Louis, Missouri, and Pence, O'Neill & Diven, attorneys for J. M. Brown, Anderson, Indiana;
6. Copy of notice of hearing on Trustee's petition to sell, mailed on March 25, 1944;
7. Copy of order for sale of assets entered April 6, 1944;
8. Copy of notice of sale sent to creditors and interested parties, including Duggan, Trustee, and to attorneys for J. M. Brown, mailed on April 10, 1944;
9. Copy of Trustee's report of sale filed April 21, 1944;
10. Copy of order assigning matter of consideration of Trustee's report of sale for hearing on April 25, 1944;
11. Copy of order entered on April 25, 1944, continuing hearing on matter of approval of Trustee's report of sale to May 2, 1944.

The petitions for review are likewise herewith transmitted.

Concurrently with the filing of this certificate, I am

sending a copy thereof, complete except for the inclusion of a copy of the order of May 3, 1944, of each of the following: Phil O'Neill, attorney for Duggan, Trustee, and for Joseph M. Brown; James C. Sansberry, Trustee in Bankruptcy; Bamberger & Feibleman, attorneys for the Trustee in Bankruptcy; Conrad S. Arnikens, attorney for the Trustee in Bankruptcy; Paul A. Pfister, Assistant United States Attorney; and Hubert Hickam, attorney of record for Jerome F. Duggan, Trustee.

Dated at Indianapolis, Indiana, this the 18th day of May, 1944.

Respectfully submitted,

Carl Wilde,

*Referee in Bankruptcy.*

26 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption 9401) \* \*

On January 24, 1944, the petition of Lilly Varnish Company of Indianapolis, Indiana, a creditor of the above named alleged bankrupt, was referred to the undersigned Referee for consideration and, in the event such Receiver is appointed, for such proceedings as are required by the Acts of Congress relating to bankruptcy; and upon appropriate notice to interested parties, hearing upon said petition was held before the Referee on January 25, 1944; the petitioning creditors appearing at said hearing by Isidore Feibleman of Bamberger & Feibleman their attorney, Jerome F. Duggan, Trustee in a proceeding for the reorganization of a corporation pending in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Christopher Engineering Company, a corporation, is the debtor, appearing by Hubert Hickam of Barnes, Hickam, Pantzer & Boyd, his attorneys, and there also appearing W. A. O'Reilly, Assistant General Manager of National Aircraft Corporation, the alleged bankrupt; and said Isidore Feibleman, at the time of said hearing, asked leave to file an amended petition on behalf of said Lilly Varnish Company and such leave being granted, it was agreed  
27 that the evidence presented would apply to such amended petition; and such amended petition asking for the appointment of a Receiver and for a restraining



order was filed on January 27, 1944 and was, on that date, referred to the undersigned Referee to consider such petition and, in the event Receiver is appointed to take such proceedings thereon as are required by the Acts of Congress relating to bankruptcy; and the Referee having considered said amended petition and the evidence and the arguments of counsel now makes and files his findings of fact thereon, as follows:

### Findings of Fact.

1. Lilly Varnish Company is one of the petitioning creditors in this proceeding; the voluntary petition was filed on January 21, 1944, and determination thereon will necessarily not be made for some time.

2. The alleged bankrupt is an Indiana corporation, engaged in the business of manufacturing airplane parts, and its principal place of business and all of its assets are located at Elwood, Indiana.

3. Earl C. Reasoner was appointed Receiver by the Madison Circuit Court on January 19, 1944, at 10:00 A. M., by reason of the alleged bankrupt being in imminent danger of insolvency and unable to discharge its matured debts and obligations.

4. Said Earl C. Reasoner did not qualify as Receiver under appointment by the Madison Circuit Court, such qualification having been delayed by reason of a restraining order entered in the matter of Christopher Engineering Company, a corporation, debtor, in proceedings for reorganization of a corporation, No. 10947 in the District Court of the United States for the Eastern Division of the East Judicial District of Missouri being called to the attention of the Judge of said court after the appointment of said Receiver.

5. A copy of such restraining order was introduced in evidence in this matter as petitioners Exhibit No. 1 but the Findings of Fact and the Conclusions of Law upon which said restraining order was entered were not placed in evidence and have not been furnished this court.

6. According to the copy of the restraining order introduced in evidence, as aforesaid, said order was entered at 2:20 o'clock P. M. on January 19, 1944, which was subsequent to the appointment of said Earl C. Reasoner as Receiver by the Madison Circuit Court.

7. Said restraining order enjoins and restrains Charles C. Smith, Judge, Madison County Indiana Circuit Court, Anderson, Indiana, and Paul Grow, of Muncie, Indiana, plaintiff, in a certain cause wherein National Aircraft Corporation is defendant and which cause is pending in the Circuit Court of Madison County, Indiana, and all other persons from taking any steps or action whatsoever kind or nature interfering with or affecting the assets and property of the National Aircraft Corporation subject to the further orders of the court issuing said restraining order, and further orders that any persons holding or asserting any claim to any of the assets or property of said National Aircraft Corporation file or assert their said claims in said reorganization proceedings before said Court.

29 8. No evidence has been introduced showing that Christopher Engineering Company, debtor in said reorganization proceedings, is the owner of the capital stock of the alleged bankrupt.

9. Christopher Engineering Company, according to the books of the alleged bankrupt, is a creditor of the bankrupt but the interests, referred to as the Christopher interests, including J. M. Brown, A. B. Christopher and Christopher Engineering Company, are, in the aggregate indebted to the alleged bankrupt in the net sum of \$37,068.48.

10. There is no official or director of the alleged bankrupt located at Elwood, Indiana, where the manufacturing plant of the alleged bankrupt is located, or in this district, and the assets and property of the alleged bankrupt are in the custody and possession of said W. A. O'Reilly, Assistant General Manager; said W. A. O'Reilly does not know who actually owns the stock of the alleged bankrupt but knows that said Brown and said Christopher who are connected with said Christopher Company are both directors.

11. The alleged bankrupt has a balance of \$40.00 in its bank account in the Citizens Bank of Elwood, Indiana, and such balance constituted its entire cash assets at the time of said hearing.

12. The employees of the bankrupt have not been paid for a period of some three weeks; certain office furniture, fixtures, raw materials and saws and small drills were recently sold for approximately \$700.00 for the purpose of

liquidating part of the then past due payroll, but  
30 three complete weeks' pay are still owing the employees; there are four watchmen employed at the plant at the rate of \$7½ per hour and these watchmen have also not been paid for a period of three weeks; approximately \$15,000.00 has been deducted from wages and salaries due employees by the alleged bankrupt on account of social security and withholding taxes but none of the money so deducted is now on hand; approximately \$1,400.00 was retained from the pay of employees for the purchase of war bonds but such war bonds have not been purchased and the money so retained is not on hand.

13. The alleged bankrupt's plant including the contents and automobile trucks, are covered by insurance aggregating approximately \$75,000.00; such insurance was written by Frank E. DeHority & Son of Elwood, Indiana, and there is an unpaid balance of premium of \$1,425.85 owing thereon and said insurance will be cancelled unless such premium is promptly paid.

14. The books and records of the alleged bankrupt are fragmentary and incomplete; the latest trial balance was made as of July 31, 1942; the alleged bankrupt had contractual relations with the United States Government and has received substantial amounts of money from the Government under such contracts; representatives of the Government have repeatedly sought in vain to obtain access to company books and records.

15. The corporate minutes and stock records of the alleged bankrupt are not at Elwood, Indiana, and are not in this district.

31 16. The real estate and buildings of the alleged bankrupt are carried on its books at \$42,613.19 and the machinery and equipment at \$34,228.40; the real estate is encumbered by certain liens in an unknown amount but not exceeding \$1,000.00; the receivables, other than those owing by the Christopher interests, amount to between \$28,000.00 and \$30,000.00 and, of these an amount between \$8,500.00 and \$10,000.00 will probably be paid in the near future and will permit the liquidation of the amounts directly owing the employees for past due wages.

17. The assets of the alleged bankrupt in this jurisdiction are in danger of loss and deterioration.

*Conclusions of Law.*

Upon the facts as above found, the Referee concludes that in view of the restraining order issued by the United States District Court for the Eastern Division of the Eastern District of Missouri, the matter of appointing a Receiver in Bankruptcy should be held under advisement and deferred for the time being but that an order should be entered restraining the alleged bankrupt, its officers, employees and agents, and all other persons from removing or permitting to be removed any of the assets of the alleged bankrupt situate in this district and from preventing the payment to the offices of the alleged bankrupt at Elwood, Indiana, of any sums due and payable to it by any person, firm or corporation and from diverting such payments elsewhere; and also from disbursing any 32 moneys coming into the hands of the alleged bankrupt, its officers, agents or representatives except as may be ordered by this court.

Dated at Indianapolis, Indiana, this the first day of February, 1944.

/s/ Carl Wilde,  
*Referee in Bankruptcy.*

CC

Bamberger & Feibleman  
Barnes, Hickam, Pantzer & Boyd  
W. A. O'Reilly.

33 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—9401) \* \*

RESTRAINING ORDER.

The amended petition for the appointment of a Receiver and for a restraining order of Lilly Varnish Company, one of the petitioning creditors herein, filed January 27, 1944, having been referred to the undersigned Referee by an order of reference entered January 27, 1944, and the Referee having heard evidence and being advised and having entered his Findings of Facts and the Conclusions of Law in the premises, which Findings of Facts

and Conclusions of Law are in the words and figures following, to-wit: (Here insert).

It Is Now Ordered that the matter of appointing a Receiver in Bankruptcy as prayed in said petition be, and it is, taken under advisement and deferred for the time being.

It Is Further Ordered that National Aircraft Corporation, its officers, employees and agents and all other persons be, and they are, enjoined and restrained, pending the further order of this Court, from removing any of the assets of the alleged bankrupt from this Judicial District and from disbursing, without the further order of this Court, any sums due and payable to it by any person, firm or corporation and from diverting such payments elsewhere; and also from disbursing any moneys coming into the hands of the alleged bankrupt, its officers, agents or representatives except as may be ordered by this Court.

Dated at Indianapolis, Indiana, this the 1st day of February, 1944.

(Signed) Carl Wilde,  
*Referee in Bankruptcy.*

CC

Bamberger & Feibleman,  
Barnes, Hickam, Pantzer & Boyd  
W. A. O'Reilly.

35 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—9401)

There having been filed in the office of the Referee this day a copy of an order adjudicating the above named National Aircraft Corporation a bankrupt under the act of Congress relating to bankruptcy, together with an order of general reference referring the proceeding to the undersigned as Referee in Bankruptcy; and an order having been entered herein on February 1, 1944, taking under advisement and deferring for the time being the matter of appointing a Receiver in Bankruptcy as prayed in the petition of Lilly Varnish Company; the Referee having given further consideration to the said petition for the appointment of a Receiver, and the Findings of Fact entered here-

in on February 1, 1944, now finds that it is absolutely necessary in order to protect and preserve the assets of the above named bankrupt that a Receiver in Bankruptcy be appointed as prayed in said petition; and accordingly, it is now

Ordered that James C. Sansberry of Anderson, Indiana, be, and he is, appointed Receiver in Bankruptcy of and for the above named bankrupt.

It Is Further Ordered that said Receiver in Bankruptcy take into his custody and possession all of the property of the above named bankrupt which may be found in this district; that he take all steps necessary for the preservation and protection of the same, including the effecting or keeping in effect necessary insurances; that he proceed with all possible dispatch to collect the amounts receivable of the bankrupt; that he employ such assistants as may be necessary to protect and preserve the property of the bankrupt and to continue with the collection of accounts receivable; and that if he shall determine upon sufficient investigation that there should be any operation of the bankrupt's business, that he so report whereupon an appropriate order may be entered.

It Is Further Ordered that before entering upon his duties as such Receiver in Bankruptcy said James C. Sansberry furnish bond in the penal sum of \$5,000.00 with surety approved by the undersigned, the obligation of said bond to run to the United States, and said bond to be conditioned upon the faithful performance of said James C. Sansberry of his duties as Receiver in Bankruptcy herein.

It Is Further Ordered that the Citizens Bank of Elwood, Indiana, be, and it is, designated as the depository for the moneys coming into the hands of said Receiver up to but not exceeding the sum of \$5,000.00 and that, in respect to all moneys in excess of \$5,000.00 coming into the hands of said Receiver The Union Trust Company of Indianapolis, be, and it is, designated as such depository.

And comes now said James C. Sansberry and presents his bond in the penal sum of \$5,000.00, conditioned upon the faithful performance of his duties as Receiver in Bankruptcy, with American Bonding Company of Baltimore, Maryland, as surety thereon, and the same having been examined by the Referee, is now approved and ordered filed in the office of the Clerk of the Court.



Dated at Indianapolis, Indiana, this the 8th day of February, 1944.

(Signed) Carl Wilde,  
*Referee in Bankruptcy.*

CC

Bamberger & Feibleman  
James C. Sansberry  
Barnes, Hickam, Pantzer & Boyd  
W. A. O'Reilly, National Aircraft Corp.  
National Aircraft Corporation  
Paul Pfister, Asst. U. S. Dist. Atty.

38 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—9401) \* \* \*

### PETITION FOR SALE OF REAL AND PERSONAL PROPERTY.

To the Hon. Carl Wilde, Referee:

1. James C. Sansberry respectfully shows to the Court that he is the duly qualified and acting Trustee herein.

2. That he has heretofore filed his inventory and appraisement of both the real and personal property belonging to said estate, which inventory and appraisement is now on file in this Court.

3. That the assets of said bankrupt corporation, in the hands of said Trustee, are of such a nature that it is highly desirable that the same be sold at the earliest possible convenient time, the same depreciating in value as time elapses, because of their particular adaptation to use in the aircraft industry and further, that such facilities are badly needed in defense industries, and that for both of these reasons, said Trustee respectfully shows to the Court that it is highly advisable that the same be sold without further delay.

4. That all of the tangible personal property heretofore inventoried and appraised herein, with the exception of so much of the office equipment as the Trustee deems necessary to retain, in order to further carry on the administration of this trust, together with the following parcels of real estate, situate in Madison County, Indiana:

39 Commencing at a point 173.2 feet West of a point in the West side of 9th Street, which is 926 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 112 feet; thence North parallel with the West line of said 9th Street, 284 feet; thence East 86.2 feet to the Southerly side of the P.C.C. & St. L. R.R. right-of-way; thence Southeasterly on and along said right-of-way line 35 feet to a point due North of the place of beginning; thence South 259.8 feet to the place of beginning.

And also, commencing at a point in the West side of 9th Street, 416 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 173.2 feet; thence North parallel with the West side of said 9th Street, 769.8 feet to the Southerly side of the P.C.C. & St. L. R.R. Company right-of-way; thence Southeasterly on and along said right-of-way line 236 feet to the West line of said 9th Street; thence South on and along the West side of said 9th Street, 608 feet to the place of beginning.

Both parcels being part of Section Nine (9), Township Twenty-one (21) North of Range Six (6) East, and excepting therefrom the right-of-way of the P.C.C. & St. L. R.R. Company upon and along the West side of said real estate;

be sold at public sale, on the premises of the bankrupt at Elwood, Indiana, to the highest cash bidder, or bidders, therefor, in their entirety, or in lots and parcels, whichever may prove to the best interests of this estate and such sale, or sales, to be subject to the approval of this Court, at such time and place, and subject to such notice as this Court may see fit to designate.

5. That the real estate referred to hereinabove should be sold free and clear of all liens and encumbrances, with the exception of the 1943 taxes, due and payable in 1944, and taxes due and payable thereafter.

40 6. That your Trustee be authorized to execute any and all contracts, bills of sale, deeds, and other instruments necessary to consummate such sale, or sales, if, as, and when made.

7. That the real estate referred to hereinabove is burdened with certain mechanics' liens, in the approximate sum of Twenty-five Hundred Dollars (\$2500.00), and that due provision should be made in said order of sale for the payment and satisfaction of said liens, from the

proceeds of said real estate, before intermingling said funds with the other funds belonging to said estate.

8. Your Trustee would further show to the Court that there are among the assets of said estate, as shown by schedule heretofore filed herein, and designated as Lots 176 and 177, two Motor Trucks, which are held by the bankrupt under conditional sale contracts, on which the approximate balance due and owing thereon is \$1340.00, and that any provision in the sale of said assets should provide for the separate sale of said trucks in such manner that the estate may have the benefit of any equity therein.

9. That authority should be given your Trustee, authorizing and directing him to employ, if he deems such employment necessary and advisable, an auctioneer to conduct said sale, the compensation of said auctioneer to be fixed by this Court.

Wherefore, your Trustee prays for an order, authorizing and directing him to offer for sale, and sell, the 41 tangible personal property and real estate referred to hereinabove, in the manner, time and place referred to hereinabove; to execute any and all contracts, deeds, bills of sale, and other instruments, necessary to consummate such sales, if, as and when made, and to employ the services of an auctioneer, and for such other and further order as this Court may deem proper and advisable.

James C. Sansberry,  
*Trustee in Bankruptcy.*

State of Indiana, }  
Marion County. } ss:

James C. Sansberry, being duly sworn upon his oath, deposes and says that he has read the allegations of the foregoing petition, and that the same are true and correct, according to the best of his knowledge, information and belief.

James C. Sansberry.

Subscribed and sworn to before me this 23rd day of March, 1944.

Josephine M. Leach,  
*Notary Public.*

My Commission expires: September 19, 1944.

42 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—9401)

Comes now James C. Sansberry, Trustee herein and files his petition for an order authorizing and directing him to offer for sale and to sell the tangible personal property referred to in his petition and the real estate therein described at public sale and to employ the services of an auctioneer, which petition is in the words and figures following, to-wit (here insert) and the Referee having considered said petition and having heard said Trustee and his attorney's, no other parties having notice or being represented, now finds that said petition should be considered at a meeting of creditors held for the purpose of considering the same; and accordingly, it is now

Ordered that a meeting of the creditors of the above named bankrupt be held at ten o'clock a. m., Central War Time, on Tuesday, April 4, 1944, in Room 245 Federal Building, Indianapolis, Indiana, for the purpose of considering said petition of the Trustee, at which time and place creditors and other parties in interest may appear and show cause, if any they have, why said petition of the Trustee should not be granted and an order of sale entered as in said petition prayed; and that, pending the holding of such hearing, the matter of the Trustee's request and authority to employ an auctioneer be taken under advisement.

It Is Further Ordered that notice of said meeting be given to all known creditors or the bankrupt by mail, by the Referee, at their addresses as the same appear in  
43 list of creditors filed herein by the Receiver in Bankruptcy or as such addresses appear upon the claims of creditors filed herein or upon other papers in this case, and that such notice be likewise sent to one Jerome S. Duggan, Receiver for Christopher Engineering Company, Inc., Wainwright Building, St. Louis, Missouri, and to Pence, O'Neill & Diven, attorneys at law, Anderson, Indiana, attorneys for J. M. Brown, Secretary-Treasurer of the bankrupt, which notices shall be mailed not less than ten days before the time fixed for said meeting.

Dated at Indianapolis, Indiana, this the 25th day of March, 1944.

(s/ Carl Wilde,  
Referee in Bankruptcy.

CC

James C. Sansberry  
Conrad S. Arnkens  
Bamberger & Feibleman  
Paul Pfister, Asst. U.S. District Atty.

44 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—9401)

To the creditors of the above named bankrupt:

You, and each of you, are hereby notified that James C. Sansberry, Trustee in Bankruptcy herein, has filed his petition alleging that the assets of the bankrupt should be sold at the earliest possible convenient time as they are depreciating in value as time elapses, by reason of their adaptation to use in the aircraft industry, and also because such facilities are badly needed in defense industries. In his petition the Trustee states that the personal property, except certain office equipment which he considers it necessary to retain in order to carry on the administration of this trust, together with the following parcels of real estate situate in Madison County, Indiana:

Commencing at a point 173.2 feet West of a point in the West side of 9th Street, which is 926 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 112 feet; thence North parallel with the West line of said 9th Street, 284 feet; thence East 86.2 feet to the Southerly side of the P. C. C. & St. L. R. R. right-of-way; thence Southeasterly on and along said right-of-way line 35 feet to a point due North of the place of beginning; thence South 259.8 feet to the place of beginning:

And also, commencing at a point in the West side of 9th Street, 416 feet North of the North line of North "D" Street; all in the city of Elwood, Indiana; thence West 173.2 feet; thence North parallel with the West side of said 9th Street, 769.8 feet to the Southerly side of the P. C. C. & St. L. R. R. Company right-of-way; thence Southeasterly on and along said right-of-way line 236 feet

to the West line of said 9th Street; thence South on and along the West side of said 9th Street, 608 feet to the place of beginning.

Both parcels being part of Section Nine (9), Township Twenty-one (21) North of Range Six (6) East, and excepting therefrom the right-of-way of the P. C. C. & St. L. R. R. Company upon and along the West side of said real estate.

should be sold at public sale on the premises of the bankrupt at Elwood, Indiana, to the highest cash bidder or bidders, in their entirety, or in lots and parcels, whichever may prove to be the best interests of this estate, sale or sales to be subject to the approval of this Court, the real estate to be sold free and clear of all liens and encumbrances with the exception of the 1943 taxes thereon, due and payable in 1944, and the taxes thereon thereafter due and payable. The Trustee also alleges that the real estate is burdened with mechanics' liens in the approximate sum of \$2,500.00 and that provision should be made in the order of sale for the payment and satisfaction of said liens, from the proceeds of said real estate. The Trustee further alleges that among the assets are two motor trucks held by the bankrupt under conditional sales contracts on which the approximate balance due and owing is \$1,340.00 and that said trucks should be ordered sold in such manner that the estate may have the benefit of any equity therein.

You are further notified that an order has been entered directing that a meeting of creditors and other persons in interest be held, for the consideration of said petition of the Trustee, at ten o'clock a. m., Central War Time, on Tuesday, April 4, 1944, in Room 245 Federal Building, Indianapolis, Indiana, at which time and place creditors and other persons in interest may appear and show cause, if any they have, why said petition of the Trustee should not be granted and an order of sale entered as therein prayed.

Said petition of the Trustee and the inventory and appraisal of the personal property of this estate are on file in the office of the undersigned Referee and may there be inspected by all parties interested.

Carl Wilde,

Referee in Bankruptcy.

Indianapolis, Indiana, March 25, 1944.



46 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—9401) \*

At a meeting of the creditors of the above named bankrupt, held in the Referee's Room, Number 245 Federal Building, Indianapolis, Indiana, at ten o'clock A. M., Central War Time, on Tuesday, April 4, 1944 for the purpose of considering the petition of James C. Saasberry, Trustee in Bankruptcy, filed herein, praying that an order be entered, authorizing the sale of certain real and personal property belonging to this estate and in said petition described, which meeting was held pursuant to notice given to all creditors and persons in interest, by mail, by the Referee on March 25, 1944, to appear and show cause, if any there be, why said petition of the Trustee should not be granted, and order of sale entered as therein prayed; the said Trustee appeared in person and by Conrad S. Arnkens and Isidore Feibleman, of Bamberger & Feibleman, said Trustee's attorneys, and the United States of America appeared by Paul A. Pfister, Assistant United States Attorney, and Major William C. Moore, Litigation Officer Fifth Service Command.

At said meeting no cause was shown by the United States Government, or by any other person or persons, why the real and personal property described in the petition of the Trustee, should not be ordered sold, as prayed, after the Trustee's showing that certain personal property, claimed by the United States of America, was not included in inventory and appraisement, or its sale contemplated in connection with order entered upon his said petition, excepting that, as to taxes, it was indicated that the real estate should be sold subject to, or free and clear from the lien of the taxes for the year 1943, payable in 1944, in accordance with whichever method was most advantageous to the estate.

The Referee having heard the Trustee herein and his counsel, and the Attorneys representing the United States of America and being advised in the premises, finds that it is to the best interests of the creditors of the bankrupt that the real property, hereinafter described, and the personal property belonging to said bankrupt estate, included in the Trustee's petition, be sold at public sale, in accord-

ance with the prayer of the Trustee's petition, and that said petition be granted, excepting as to the possible exclusion from said sale of one airplane and variation as to sale of real estate subject to taxes for the year 1943, and accordingly, it is now

Ordered, Adjudged and Decreed:

That James C. Sansberry, as Trustee in Bankruptcy of National Aircraft Corporation, Bankrupt, be, and he is, hereby directed and empowered to sell and dispose of the real property hereinafter described, and the personal property belonging to said bankrupt estate, as set forth in said Trustee's petition, with the exceptions hereinafter made, at public sale on the premises heretofore occupied

by said bankrupt at Number 450 North Ninth Street, 47 in the City of Elwood, Indiana, on the 20th day of

April, 1944, at 9:30 o'clock, A. M., Central War Time, and if necessary, to continue said sale from day to day thereafter, until said real estate and all of said personal property shall have been sold, the real estate to be sold subject to property taxes thereon for the year 1943, payable in 1944, or free and clear therefrom, in accordance with whichever method shall be more advantageous to the estate, but the same to be sold subject to the taxes for the year 1944, payable in 1945, and said real estate also to be sold free and clear from the lien of certain mechanics' and materialmen's liens which, if valid, shall be transferred to the fund derived from the sale.

That said real estate, so ordered sold, is the following described real estate, located and situate in Madison County, Indiana, to-wit:

Commencing at a point 173.2 feet West of a point in the West side of 9th Street, which is 926 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 112 feet; thence North parallel with the West line of said 9th Street, 284 feet; thence East 86.2 feet to the Southerly side of the P. C. C. & St. L. R. R. right-of-way; thence Southeasterly on and along said right-of-way line 35 feet to a point due North of the place of beginning; thence South 259.8 feet to the place of beginning.

And also, commencing at a point in the West side of 9th Street, 416 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West

173.2 feet; thence North parallel with the West side of said 9th Street, 769.8 feet to the Southerly side of the P. C. C. & St. L. R. R. Company right-of-way; thence Southeasterly on and along said right-of-way line 236 feet to the West line of said 9th Street; thence South on and along the West side of said 9th Street, 608 feet to the place of beginning.

Both parcels being part of Section Nine (9), Township Twenty-one (21) North of Range Six (6) East, and excepting therefrom the right-of-way of the P. C. C. & St. L. R. R. Company upon and along the West side of said real estate.

That the tangible personal property so ordered sold, includes all of the personal property heretofore inventoried and appraised herein, which inventory and appraisement are on file in the office of the Referee, with the exception of one airplane unless certificate of title thereto is received prior to the time of sale, and also with the exception of so much of the office equipment as the Trustee deems necessary to retain, in order to carry on further the administration of this trust, which office furniture has been removed from said premises. That there shall also be included in said sale the good will of the business of said bankrupt.

That there shall also be excluded from said sale the personal property, possession of which is claimed by the United States of America, and concerning which order has been entered contemporaneously herewith.

48 That said real and personal property shall be sold for cash, to the highest bidder or bidders, and that the method of sale shall be as follows:

That all of the real and personal property included in this sale, excepting two motor trucks hereinafter mentioned, together with the good will of said business, shall first be offered as an entirety; then the real estate shall be offered separately, and all personal property, with the same exception, together with the good will of said business, shall be offered as an entirety; then the personal property shall be offered for sale piecemeal, and sale shall be made upon the basis most advantageous to the estate.

That among the assets of said estate, designated as Lots 176 and 177 in the inventory and appraisement filed herein,

are two motor trucks held under conditional sale contracts, upon which the approximate balance due and owing thereon is \$1340.00, and that the sale of said trucks should be made separately and they should be sold, in case the best bid therefor exceeds the amount owing thereon, which shall thereupon be paid. &

*It Is Further Ordered:*

That notice of such sale be given by mail by the Referee to all known creditors of the bankrupt, and all other known parties in interest, at their addresses as the same appear in the records in the office of the Referee, not less than ten days before the time fixed for said public sale, and that the Trustee cause notice of the sale of said real and personal property to be given by publishing the same at least one time in a newspaper of general circulation in the City of Indianapolis, Indiana, not less than ten days prior to the date of said sale, and that he give such other and further notice by publication, or otherwise, and make such other advertisement thereof, as he shall deem necessary and desirable.

*It Is Further Ordered:*

That said Trustee be, and he is, hereby authorized and empowered to employ an auctioneer to arrange and lot the personal property, and to conduct the sale of said real estate and personal property, subject to his supervision, said auctioneer to be one qualified in accordance with the provisions of the Chandler Act, and the compensation of said auctioneer to be hereafter fixed by this Court, not to exceed a sum equal to five percent (5%) of the proceeds of sale or sales, and proper and reasonable expenses of said auctioneer to be paid in addition.

*It Is Further Ordered:*

That the Trustee make due report of his proceedings hereunder to the Referee, sales to be subject to approval.

All of which is Ordered, Adjudged and Decreed by the Court.

Dated at Indianapolis, Indiana, this 6th day of April, 1944.

(Signed) Carl Wilde,  
*Referee in Bankruptcy.*

49 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—9401) \* \*

### NOTICE TO CREDITORS.

To all creditors of the above named bankrupt and all other parties in interest: C

You and each of you are hereby notified that an Order of Sale has been entered in this Cause, following the hearing held on April 4, 1944, for the consideration of the Trustee's petition for such order.

The Order of Sale directs that the Trustee shall offer for sale at public auction the real estate of the bankrupt (description whereof was set forth in the notice sent to creditors under date of March 25, 1944) and all of the tangible personal property except certain office furniture and equipment which will be needed by the Trustee in the further administration of the estate and which has been removed from the premises, and an airplane, which latter will not be offered for sale unless Certificate of Title thereto is received prior to the time of sale. In addition to the tangible personal property, the Trustee will also offer for sale the good will of the business of the bankrupt.

The sale will take place at the premises of the bankrupt at No. 450 North 9th Street, Elwood, Indiana, beginning at 9:30 o'clock a.m. Central War Time on Thursday, April 20, 1944, and will continue, if necessary, from day to day thereafter until the property has been sold.

The real estate will be sold subject to property taxes thereon for the year 1943 payable in 1944, or free and clear therefrom, whichever is more advantageous to the estate, and the real estate will be sold free and clear from the lien of certain mechanics' and materialmen's liens which, if valid, will be transferred to the fund derived from the sale. The real estate will be sold subject to the lien of the property taxes thereon for 1944 payable in 1945. The personal property will be sold free and clear of all liens and encumbrances.

The Trustee will first offer all of the real and personal property included in the sale (excepting two motor trucks) together with the good will of the business, as an entirety; he will then offer the real estate separately; and then all personal property (with the same exceptions) together with the good will of the business, as an entirety; he will

then offer the personal property piecemeal; and sale or sales will be made as appears advantageous to the estate. Two motor trucks held under conditional sales contracts upon which there is an approximate aggregate balance of \$1,340.00 due, will be sold separately from the other property for an amount not less than sufficient to pay the liens in full. The sale of such motor trucks will, of course, be subject to all applicable price regulations.

All sales will be to the highest bidders, for cash, subject to the approval of the Referee.

For further information please communicate with the Trustee, Mr. James C. Sansberry, Anderson, Indiana, or with his attorneys: Bamberger & Feibleman, Indianapolis, Indiana, and Conrad S. Arnkens, Anderson, Indiana.

The inventory and appraisalment of the property to be sold is on file in the office of the undersigned and may be there inspected by all interested parties.

Carl Wilde,

April 10, 1944.

*Referee in Bankruptcy.*

50 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—9401)

Comes now James C. Sansberry, Trustee in Bankruptcy herein, and files his report concerning the public sale of the assets of the bankrupt held at Elwood, Indiana on April 20, 1944, pursuant to the order of sale entered herein on April 6, 1944; said Trustee showing in his said report that all of the assets ordered sold were first offered for sale as an entirety including good will, with the exception of two trucks and an airplane, and that the highest and best bid received for said assets when so offered was \$30,000.00; that the Trustee then offered real estate, with buildings, separately, and that the highest and best bid received therefor was \$18,750.00; that the Trustee then offered two automobile trucks and that the highest and best bid received therefor was \$3,350.00; that the Trustee then offered the Curtis Robin Airplane, subject to C. A. A. regulations, and that the highest and best bid received therefor was \$575.00; that Trustee then offered, as a whole, the machinery, inventory and office furniture, excluding the trucks and the airplane, and that the highest and best bid received therefor was \$14,800.00; that the Trustee then offered the machinery, inventory and office



furniture piecemeal and that the aggregate of the highest and best bids received therefor was approximately \$32,500.00; it appearing that the aggregate amount bid for the real estate, when offered separately, and for 51 the machinery, inventory and office furniture when offered as a whole, was approximately \$51,250.00; that the good will was offered separately and that the highest and best bid received therefor was \$140.00 including a large amount of stationery and printed forms; it appearing from the said report of the Trustee that the aggregate of all the highest and best bids received for the property offered was approximately \$55,315.00; the Trustee in his said report showing further that, immediately before the beginning of the sale there was served upon him a copy of an order entered in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri in the Matter of Christopher Engineering Company, a corporation, in proceedings for the reorganization of a corporation, being No. 10947, wherein said Court restrains and enjoins said Trustee in Bankruptcy from doing any act or thing whatsoever affecting the property and assets of the bankrupt and further enjoining and restraining him from doing any act or thing whatsoever to interfere with the right of one Jerome F. Duggan, Trustee of Christopher Engineering Company in said reorganization proceeding, to the immediate possession or management of the property and assets of the bankrupt and further restraining and enjoining said Trustee herein from interfering with said Duggan in the discharge of his duties in said reorganization proceeding, and further ordering and directing said Trustee herein forthwith to turn over and deliver unto said Duggan all of the property and assets of the bankrupt in his possession or control; said Trustee, in his said report, further showing that at the time of the sale of the said assets it was announced to all present at said sale that the matter of the approval and confirmation thereof would be heard before the undersigned Referee at 10 o'clock a. m. on Tuesday, April 52 25, 1944, in the Bankruptcy Court Room, Room 245 Federal Building, Indianapolis, Indiana; that after being served with a copy of said order entered in said reorganization proceeding as aforesaid, Trustee in Bankruptcy herein, upon the advice of his counsel, with the knowledge of the Referee in Bankruptcy, concluded to proceed with the sale; the Trustee showing that notice of

said sale had been given by publication in the following newspapers: The Indianapolis News, The Indianapolis Star, The Chicago Tribune, The Chicago Daily News, and other newspapers of general circulation published in the Cities of Anderson, Kokomo, Marion, Fort Wayne, and Elwood, Indiana, and that notices had been sent to some 3,750 prospective purchasers; that between 300 and 400 persons attended said sale; that the amount of the highest bids received for the property is approximately \$10,000.00 in excess of the appraised value thereof and that such sales are advantageous to the estate and should be approved and confirmed by this court; the Trustee in his said petition praying that his acts in connection with said sale be approved by the Court; that the report be set down for hearing at the time named; and that after consideration and after due notice to the bankrupt and its officers and to said Duggan, Trustee, that said sales be approved and confirmed, or such action taken, as to the Court shall seem just and proper; which said report of the Trustee is in the words and figures following to-wit (here insert); and the Referee having heard the Trustee and his counsel in respect to said report, no other persons being present or represented except the United States Army Air Force by Major Charles E. Mattox, now finds; that at a hearing held before the Referee, upon the petition for the appointment of a Receiver in Bankruptcy, Jerome F. Duggan, as Trustee of Christopher Engineering Company, appeared by Hubert Hickam, his attorney, in opposition to such  
53 appointment; that said Receiver was appointed herein and said Duggan filed no petition for review and made no appeal from the order of appointment; that previously National Aircraft Corporation was adjudged a bankrupt, no answer contravening the involuntary petition filed against said Corporation having been filed; that at the first meeting of creditors ~~one~~ J. M. Brown, Secretary-Treasurer of the bankrupt, appeared and was examined under oath by the Referee and by representatives of creditors present at said meeting, said Brown being represented by counsel at said meeting; that at said meeting said Brown testified that the capital stock of National Aircraft Corporation was the individual property of himself and one A. B. Christopher; that on March 21, 1944, James C. Sansberry, Trustee herein, filed petition for the sale of the real and personal property and that on said date an order was entered directing that a meeting of

creditors be held on April 4, 1944, upon notice to creditors, and that notice of said meeting was sent to said Jerome F. Duggan, Trustee of Christopher Engineering Company and to counsel of record for said Brown and that said notices were duly delivered to said Duggan and to counsel for said Brown; that said Duggan, Trustee, and said Brown, although notified of said hearing upon said petition of the Trustee, did not appear, and that no objection was made at said meeting held on April 4, 1944, to the entering of an order of sale herein; that on April 6, 1944, order was entered directing the Trustee to sell the property of the bankrupt at public sale on April 20, 1944, pursuant to which order the sale was held as reported by the Trustee in his said report; that said Duggan, Trustee, and said Brown, were apprised of the entering of said order and that no review of said order was asked and no appeal taken therefrom;

And the Referee further finds that all of the assets  
54 of the bankrupt have been in the possession of an officer of the United States District Court for the Southern District of Indiana at all times since the appointment of said James C. Sansberry as Receiver in Bankruptcy herein continuously since February 8, 1944, and that said assets are now in the custody of said Court and that no application has been made to said Court for the release of its custody thereof;

And the Referee further finds that the matter of the approval and confirmation of the sales of assets reported by the Trustee should be assigned for hearing on April 25, 1944, and that said Jerome F. Duggan, Trustee of Christopher Engineering Company, and said J. M. Brown, who has been active in this matter and who, at the first meeting of creditors, made a proposal to the creditors there assembled in respect to the sale of the bankrupt's property, and all other persons in interest, should be required to appear and show cause, if any they have, why the sales of the assets of the bankrupt as reported by the Trustee should not be approved and confirmed and why the Trustee, upon receipt of the amounts paid, should not be authorized to turn over the property to the respective purchasers thereof; and accordingly it is now

Ordered that the matter of the approval and confirmation of the sales reported by the Trustee be and it is assigned for hearing before the undersigned Referee at 10:00 o'clock a. m. Central War Time on Tuesday, April

25 1944, in Room 245 Federal Building, Indianapolis, Indiana, at which time and place said Jerome F. Duggan, Trustee of Christopher Engineering Company, and said J. M. Brown and all other persons in interest may appear and show cause, if any they have, why the sales reported by the Trustee should not be approved and why, upon receipt of the purchase price from the respective high bidders at said sale, the Trustee should not be authorized to deliver the property to the purchasers thereof and to  
55 execute such instruments as may be necessary to evidence the transfer of ownership.

And notice having been given to all present at said sale that the matter of the approval and confirmation thereof would be heard at the time and place aforesaid, the Referee finds that no further notice is necessary except that notice shall be given to said Duggan, Trustee and to said Brown, and it is

Ordered that a copy of this order be sent by mail by the Referee to each of the following: Jerome F. Duggan, as Trustee for Christopher Engineering Company, Wainwright Building, St. Louis, Missouri; J. M. Brown, c/o Pence, O'Neill and Diven, Anderson Bank Building, Anderson, Indiana; Hubert Hickam, attorney at Law, 1313 Merchants Bank Building, Indianapolis, Indiana; Attorney of record for said Duggan, Trustee; and Paul A. Pfister, Assistant United States Attorney representing the United States Army Air Force, and that the mailing thereof shall constitute sufficient notice to said parties of the entering of this order and of all of the terms and provisions thereof.

Dated at Indianapolis, Indiana, this 21st day of April, 1944.

(Signed) Carl Wilde,

*Referee in Bankruptcy.*

CC—

Jerome F. Duggan, Wainwright Bldg., St. Louis, Mo.  
J. M. Brown, c/o Pence, O'Neill and Diven, Anderson  
Bank Bldg., Anderson, Indiana  
Hubert Hickam, 1313 Merchants Bank Bldg., Indianapolis,  
Indiana  
James C. Sansberry, 938 Meridian St., Anderson, Indiana  
Conrad S. Arnkens, Citizens Bank Bldg., Anderson, Indiana  
Bamberger and Feibleman, 130 E. Washington St.,  
Indianapolis, Ind.  
Paul A. Pfister, Assistant U. S. Attorney, Federal Bldg.,  
Indianapolis, Indiana.

56 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—9401) \* \*

**TRUSTEE'S REPORT OF SALE OF REAL AND  
PERSONAL PROPERTY.****To:****The Honorable Carl Wilde,  
Referee in Bankruptcy.**

James C. Sansberry, duly qualified and acting Trustee of the estate of the above named bankrupt, respectfully represents:

1. That heretofore on the 6th day of April, 1944, an order was entered herein by this Court, ordering and directing your petitioner to sell the following described real estate belonging to said bankrupt and located in Madison County, Indiana, to-wit:

Commencing at a point 173.2 feet West of a point in the West side of 9th Street, which is 926 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 112 feet; thence North parallel with the West line of said 9th Street, 284 feet; thence East 86.2 feet to the Southerly side of the P. C. C. & St. L. R. R. right-of-way; thence Southeasterly on and along said right-of-way 35 feet to a point due North of the place of beginning; thence South 259.8 feet to the place of beginning.

And also, commencing at a point in the West side of 9th Street, 416 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 173.2 feet; thence North parallel with the West side of said 9th Street, 769.8 feet to the Southerly side of the P. C. C. & St. L. R. R. Company right-of-way; thence Southeasterly on and along said right-of-way line 236 feet to the West line of said 9th Street; thence South on and along the West side of said 9th Street, 608 feet to the place of beginning.

57 Both parcels being part of Section Nine (9), Township Twenty-one (21) North of Range Six (6) East, and excepting therefrom the right-of-way of the P. C. C. & St. L. R. R. Company upon and along the West side of said real estate.

2. That said order further directed your petitioner to sell all tangible personal property as in this proceeding

heretofore inventoried and appraised and located upon the premises formerly occupied by the bankrupt, 450 North Ninth Street, Elwood, Indiana, in lots and parcels or as a whole as would seem to be most advantageous to the estate and

3. Upon Thursday, the 20th day of April, 1944, at 9:30 A. M., CWT and throughout said day your petitioner offered for sale, subject to the approval of this Court, the following parcels:

Parcel 1 Real Estate, Machinery, Inventory, Office Furniture and Good Will as an entirety (excluding trucks).

Parcel 2 Real Estate (Land and Buildings).

Parcel 3 Automobile Trucks.

Parcel 4 Curtis Robin Aeroplane (subject to C. A. A. regulations).

Parcel 5 Machinery, Inventory, Office Furniture.

Parcel 6 Piecemeal offering of Parcel 5.

4. That said sale was conducted by Samuel L. Winteritz & Company, Inc., a corporation organized and existing under the laws of the State of Indiana with its principal office at 1607 Hanna Street, Fort Wayne, Indiana.

Your Trustee feels and believes that at this time he should compliment the auctioneer for the fine manner in which the sale was planned, arranged and conducted. All items of personal property had been carefully arranged,

cleaned and marked by lot and quantity numbers, there being in all something in excess of six hundred lots that were sold. The sale began promptly at 9:30 A. M.

and was completed about approximately 6:00 P. M. In many instances and where ceiling prices did not prevail, items brought in excess of cost. The auctioneers worked constantly and continuously throughout the day without interruption.

5. That notice of said sale was given by publishing the form of notice hereto annexed, which was circulated to some thirty-seven hundred fifty prospective buyers, and by publishing in newspapers in: Indianapolis News, Indianapolis Star, Chicago Tribune, Chicago Daily News, and other newspapers of general circulation, published in the cities of Anderson, Kokomo, Marion, Fort Wayne and Elwood, Indiana.

6. That between three and four hundred persons attended said sale and as a result thereof the following bids



were the highest and best bids received from the various parcels and piecemeal offerings as above set out:

Parcel One was first offered and the highest and best bid obtained therefor was \$30,000.00, made by William J. Black of Anderson, Indiana; Parcel Two was then offered and was sold to Charles Green of Chicago, Illinois, for \$18,750.00; Parcel Three was next offered, being the two trucks listed, one of which was sold to DeKalb Seed Company of DeKalb, Illinois, for \$1,350.00 and the other to L. Hauffman of Peru, Indiana, for \$2,000.00; Parcel Four was sold to Mr. Wambaugh of the Elkhart Brass Company, Elkhart, Indiana, on his bid of \$575.00; Parcel Five, including dies in storage in Muncie, Indiana, was sold to Charles Green of Chicago, Illinois upon his highest and best bid of \$14,600.00; and Parcel Six, being the piecemeal offering of Parcel Five, was sold in parts and parcels to numerous buyers present for a total of approximately \$32,500.00 and the Good Will was last offered and sold to Kelly and Segal of St. Louis, Missouri, for \$140.00, the only tangible assets passing therewith being a large quantity of printed stationery carrying the name of the bankrupt.

7. That deposits totaling approximately \$12,800.00 were delivered by the auctioneer to your petitioner and each buyer has established his credit to the satisfaction of the auctioneer and Trustee herein and stands ready to pay the balances upon the confirmation of this sale, the same to be paid within forty-eight hours after confirmation.

8. That real estate and buildings and personal property have been heretofore appraised by appraisers appointed by this Court and the appraised value of the real estate and buildings is \$23,000.00 and the appraised value of the tangible personal property so offered is \$24,053.50.

9. That said sale was conducted pursuant to OPA Regulations as to machinery, selling in excess of \$100.00, said sales being made by lot. That the exact amount of the sum realized from the sale of personal property cannot be stated definitely at this time because some items will still have to be checked by and between the Auctioneer and OPA representatives.

10. That at about 11:30 A. M. on the day of said auction, the said William J. Black, who had theretofore made a bid of \$30,000 for the real and personal property, and good will as an entirety, exclusive of trucks and airplane,

privately increased this bulk bid to \$45,000, making deposit thereon, but that no announcement was made by the Auctioneer or the Trustee of such bid at the time, lest it have a detrimental effect upon the piecemeal sale already in progress, said bidder being given to understand that the same would be reported to the Referee, with the circumstances in connection therewith.

11. That immediately prior to the beginning of the auction sale, a Deputy United States Marshall from the office at Indianapolis, served upon the Trustee and upon Mr. Adolph Winternitz, of the Auctioneer firm, copies of an injunction, or restraining order that had been entered by the United States District Court, for the Eastern District, Eastern Division of Missouri, on the preceding day, in the matter of Christopher Engineering Company, a corporation, in which proceeding the National Aircraft Corporation had evidently filed a petition on April 19, 1944, as a wholly owned subsidiary of said Christopher Engineering Company. That a true copy of said order is attached hereto, made part hereof, and marked Exhibit "A". That Jerome F. Duggan, named therein as Trustee, appeared in the pending bankruptcy proceeding by Hubert Hickam, of the Indianapolis Bar, in opposition to appointing Receiver, setting forth that he made mention of a prior restraining order that had been entered in the same proceeding at the time the State Court Receivership proceeding in Anderson was pending. That Receiver was appointed herein, notwithstanding the objections interposed on behalf of the said Duggan, Trustee, and that there was no petition for review filed, or appealed from said order of appointment. That the said bankrupt, thru Mr. J. M. Brown, its Secretary-Treasurer, appeared at the first meeting of creditors herein and was examined. He was represented at the time by counsel and testified that the stock of National Aircraft Corporation was owned individually by himself and by Mr. Christopher, and that while after the proceeding had been filed in St. Louis the stock was assigned to the said Duggan, as Trustee, that this was for the purpose of determining ownership, and that it did not belong to Christopher Engineering Company. That notice was given the said Duggan, Trustee, and the said National Aircraft Corporation of hearing on petition for the sale of the real and personal property herein, which hearing was had on April 4, 1944, but that they did

not appear at the same and filed no objection to said sale taking place, and order of sale was entered, upon which they filed on petition for review and did not appeal therefrom. That, pursuant to the order of sale, said Trustee made advertisement of the same as hereinbefore set forth, engaged auctioneer as authorized by the Court, who sent out circulars in the number hereinbefore mentioned, bringing some 300 to 400 people from distant parts to attend this sale, and that said Trustee, upon advise of counsel and with the knowledge of the Referee, in view of all of the circumstances, and in order that bankrupt sales, ordered by the United States District Court for the District of Indiana, would not come into disrepute with the general public and those attending such sales, concluded to proceed with the sale and did so, with the results herēinbefore set forth.

12. That said sale, in the opinion of your Trustee, being for approximately \$10,000.00 in excess of the appraisement is a most advantageous one to the estate and deserves to be approved and confirmed by the Court. That the successful bidders and all parties attending the sale, were notified that the matter of confirmation of sale would come up before the Referee for hearing, at his office, 245 Federal Building, in the City of Indianapolis, on Tuesday, April 25, 1944, at 10 A. M. Central War Time, and that the bidders would thereafter be advised of the Court's action respecting the same.

Wherefore, said Trustee prays that his acts in connection with said sale be approved by the Court; that this report to set down for hearing by formal order, at the time named, and that after such consideration, and after  
62 due notice to said bankrupt and its officers, and to the said Duggan, Trustee, that the same be approved and confirmed, or such action taken as to the Court shall deem just and proper.

(Signed) James C. Sansberry,

*Trustee.*

Subscribed and sworn to before me this 21st day of April, 1944.

(Signed) Conrad S. Arnkens,

*Notary Public.*

My Commission expires:

May 15, 1945.

63 . IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—9401)

At the hearing held this 25th day of April, 1944, for consideration of the approval and confirmation of the sales of assets reported by the Trustee, in accordance with the order entered herein on April 21, 1944, the Trustee, James C. Sansberry, appeared in person and by Isidore Feibleman of Bamberger and Feibleman and Conrad S. Arnkens, his attorneys; and the United States appeared by Paul A. Pfister, Assistant United States attorney; and it appearing that the Trustee and his counsel intend to proceed to St. Louis, Missouri, to ascertain the facts surrounding the entering of an order by the Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri in the matter of Christopher Engineering Company in proceedings for the reorganization of a Corporation, being Cause No. 10947 in said Court, whereby the Trustee in Bankruptcy herein was restrained and enjoined from doing any act or thing whatsoever affecting the property and assets of the above named bankrupt, the Referee finds that this hearing should be continued, without further notice, until 10 o'clock a. m. on Tuesday, May 2, 1944, said continued hearing to take place in Room 245 Federal Building, Indianapolis, Indiana; and that, pending the holding of said further hearing, this Court retain full and complete jurisdiction over all of the assets of the bankrupt.

S/ Carl Wilde,  
*Referee in Bankruptcy.*

CC—

Bamberger and Feibleman, 130 E. Washington St., Indianapolis, Ind.

Conrad S. Arnkens, Citizens Bank Bldg., Anderson, Indiana

James C. Sansberry, 938 Meridian St., Anderson, Indiana

Paul F. Pfister, Assistant U. S. Attorney, Federal Bldg., Indianapolis, Indiana.

64      IN THE UNITED STATES DISTRICT COURT.  
         \* \* \* (Caption—9401) \* \* \*

PETITION FOR REVIEW OF REFEREE'S ORDER.

(Filed May 10, 1944.)

To Carl Wilde, Esq., Referee in Bankruptcy.

The petition of National Aircraft Corporation respectfully represents:

1. Your petitioner is the bankrupt herein.
2. That on or about the 25th day of April, 1944, the question of the approval of the sale of the assets herein by James C. Sansberry, the trustee herein, came on for a hearing, and on or about the 2nd day of May, 1944, an order was entered approving and confirming the said sale of said assets theretofore held on or about the 20th day of April, 1944, which said order is in the words and figures following:

65      IN THE DISTRICT COURT OF THE UNITED STATES.  
         \* \* \* (Caption—9401) \* \* \*

At the continued hearing held May 2, 1944, pursuant to order entered herein on April 25, 1944, for the consideration of the report of sale filed by James C. Sansberry, Trustee in Bankruptcy herein, on April 21, 1944, the said Trustee appeared in person and by Isidore Feibleman of Bamberger & Feibleman, his attorneys, and the United States appeared by Paul A. Pfister, Assistant United States Attorney, and no creditors or other parties in interest appeared either in person or by attorney, and no cause was shown why the said report of sale should not be approved and the sales to the high bidders as therein reported, confirmed; and the Referee, having considered the evidence and being advised, finds that the assets offered for sale at the public sale held on April 20, 1944 are in the custody and control of the United States District Court for the Southern District of Indiana, and that no application for the release of said assets has been filed in said Court, and that title to said assets is in said James C.

Sansberry, as Trustee in Bankruptcy of the above named bankrupt; and the Referee further finds that said assets being in the custody and control of said Court, and the matter having been referred to the Referee, it is the duty of the Referee to determine whether or not said report of sale should be approved and the sales to the high bidders for the assets of the bankrupt confirmed, and that if said sale was fairly held and adequately attended, and said bids are adequate and reasonable, the sales to said bidders should be confirmed; and the Referee further finds that the aggregate amount bid for the property offered is substantially in excess of the appraised value thereof and very greatly in excess of the value fixed thereon by Joseph

M. Brown, Secretary-Treasurer of the bankrupt, in his 66 - testimony at the first meeting of creditors, and that, with the exceptions hereinafter noted, said sales should be approved and confirmed; and accordingly, it is now

Ordered that said report of sale of the Trustee and the acts and doings of said Trustee by him therein reported be, and they are, approved; that the sale of the real estate described in said report, to Charles Green of Chicago, Illinois, for the sum of \$18,750.00 be, and it is, approved and confirmed; that the sale of the one ton automobile truck to DeKalb Seed Company of DeKalb, Illinois, for \$1,350.00 be, and it is, approved and confirmed; that the sale of the one and one-half ton truck to L. Hoffman of Peru, Indiana, for the sum of \$2,000.00 be, and it is, approved and confirmed; that the sale of the Airplane, referred to in the report of sale as Parcel 4, to F. Wambaugh of Elkhart, Indiana, for the sum of \$575.00 be, and it is, approved and confirmed; and that the sales of the personal property when offered piecemeal, as reported by the Trustee and as shown in detail in the report of the Auctioneer to the various high bidders therefor, be, and they are, approved and confirmed with the following exceptions: The sale of a heater, known as Lot No. 530, in the sum of \$20.00; the sale of the good will, which was included in Parcel No. 6 but was not designated by lot number, in the sum of \$140.00; the sale of said heater and of said good will being hereby expressly disapproved and the Trustee ordered to reject the bids therefor; the sales of all of said assets hereinabove confirmed to be free and clear of all liens and encumbrances except the property taxes upon said real estate for the year 1944, payable in 1945, to which



said real estate is sold subject, all valid and subsisting liens and encumbrances of which said assets are sold free and clear to follow and attach to the proceeds derived from the sale thereof and to be paid therefrom.

It is Further Ordered that the Trustee be, and is, upon receipt of the purchase price of the assets sold and the sale whereof is herein confirmed, authorized and directed to deliver said property to the respective purchasers thereof and to execute such instruments as may be necessary to evidence the transfer of title thereto.

Dated at Indianapolis, Indiana, this the third day of May, 1944.

(Signed) Earl Wilde,  
*Referee in Bankruptcy.*

CC

James C. Sansberry  
Conrad S. Arnkens  
Bamberger & Feibleman  
Paul A. Pfister  
William C. Moore  
Philip B. O'Neill  
Hubert Hickam

68 The said order is erroneous for the following reasons:

a) Said Referee in Bankruptcy and said Court was without jurisdiction to enter said order or any order affecting the assets and property of the bankrupt.

b) Said Court did not have jurisdiction over the assets of this bankrupt for the reason that the said bankrupt did on the 19th day of April, 1944, file in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri its petition as a subsidiary corporation of the Christopher Engineering Company, a corporation, in the reorganization proceedings pending in said United States District Court at St. Louis, Missouri, being Cause No. 10947 under Chapter X of the Bankruptcy Act, and said petition of said National Aircraft Corporation, a subsidiary, was duly approved as properly filed under Chapter X of the Bankruptcy Act on the said 19th day of April, 1944, and by reason thereof, the said United States District Court for the Eastern Division of the Eastern Judicial District of Missouri was vested with sole and exclusive jurisdiction over the assets of the National Aircraft Corporation, wherever located, and all proceedings in this cause were stayed.

Wherefore, your petitioner prays for a review of the said order by the judge and that the said order be vacated and set aside.

National Aircraft Corporation,  
by J. M. Brown,  
*Secretary-Treasurer.*

United States of America }  
State of Missouri }  
City of St. Louis }

J. M. Brown makes solemn oath that he is the Secretary-Treasurer of the National Aircraft Corporation, a corporation, the petitioner named in the foregoing petition, and is duly authorized to make said petition and this affidavit in its behalf, and that the statements contained in said petition are true according to the best of his knowledge, information and belief.

J. M. Brown.

Subscribed and sworn to before me this 5th day of May, 1944.

Noah Weinstein,  
*Notary Public.*

(Seal)

My Commission expires: March 13, 1948.

69

IN THE UNITED STATES DISTRICT COURT.  
\* \* (Caption—9401) \* \*

PETITION FOR STAY PENDING REVIEW BY  
JUDGE.

To the Honorable Carl Wilde, Esq., Referee in Bankruptcy.

The petition of National Aircraft Corporation respectfully represents:

- 1) On the                      day of May, 1944, it filed herein a petition to review a certain order entered herein on or about the 2nd day of May, 1944, wherein the sale of the assets of the bankrupt was approved.
- 2) It believes the said order is erroneous for the reasons set out in its said petition for review and it has not filed the said petition for the purpose of delay.

*Referee's Certificate on Review.*

Wherefore, your petitioner prays that an order be entered staying the enforcement of said order.

Respectfully submitted,

National Aircraft Corporation,

by J. M. Brown,

*Secretary-Treasurer.*

United States of America }  
State of Missouri }  
City of St. Louis }

J. M. Brown makes solemn oath that he is the Secretary-Treasurer of the National Aircraft Corporation, a corporation, the petitioner named in the foregoing petition, and is duly authorized to make said petition and this affidavit in its behalf, and that the statements contained in said petition are true according to the best of his knowledge, information and belief.

J. M. Brown.

Subscribed and sworn to before me this 5th day of May, 1944.

Noah Weinstein,

(Seal)

*Notary Public.*

My Commission expires: March 13, 1948.

IN THE UNITED STATES DISTRICT COURT.

(Caption—9401)

PETITION FOR REVIEW OF REFEREE'S ORDER.

(Filed May 10, 1944.)

To Carl Wilde, Esq., Referee in Bankruptcy.

✓ The petition of Jerome F. Duggan, Trustee, respectfully represents:

1. Your petitioner is the duly appointed, qualified and acting Trustee of the estate of Christopher Engineering Company, a corporation in a proceeding under Chapter X of the Bankruptcy Act, which was filed on the 27th day of December, 1943, in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, and which said petition was duly approved as prop-

erly filed on said same date and on said same date your petitioner was duly appointed Trustee therein and has been ever since acting in said capacity. That in said same proceedings the National Aircraft Corporation did, as a subsidiary corporation of the said Christopher Engineering Company, file its petition as such subsidiary on the 19th day of April, 1944, and on said same date the said United States District Court for the Eastern Division of the Eastern Judicial District of Missouri did approve said petition of said National Aircraft Corporation as being properly filed and did, on said same date in said same order, appoint your petitioner as the Trustee of said National Aircraft Corporation, and your petitioner did thereupon duly qualify as such Trustee and has been ever since acting in said capacity.

2. That on or about the 25th day of April, 1944, the question of the approval of the sale of the assets herein by James C. Sansberry, the Trustee herein, came on for a hearing, and on or about the 2nd day of May, 1944, an order was entered approving and confirming the said sale of said assets theretofore held on or about the 20th day of April, 1944, which said order is in the words and figures following:

71 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* \* (Caption—9401) \* \* \*

At the continued hearing held May 2, 1944, pursuant to order entered herein on April 25, 1944, for the consideration of the report of sale filed by James C. Sansberry, Trustee in Bankruptcy herein, on April 21, 1944, the said Trustee appeared in person and by Isidore Feibleman of Bamberger & Feibleman, his attorneys, and the United States appeared by Paul A. Pfister, Assistant United States Attorney, and no creditors or other parties in interest appeared either in person or by attorney, and no cause was shown why the said report of sale should not be approved and the sales to the high bidders as therein reported, confirmed; and the Referee, having considered the evidence and being advised, finds that the assets offered for sale at the public sale held on April 20, 1944 are in the custody and control of the United States District Court for the Southern District of Indiana, and that no application for

the release of said assets has been filed in said Court, and that title to said assets is in said James C. Sansberry, as Trustee in Bankruptcy of the above named bankrupt; and the Referee further finds that said assets being in the custody and control of said Court, and the matter having been referred to the Referee, it is the duty of the Referee to determine whether or not said report of sale should be approved and the sales to the high bidders for the assets of the bankrupt confirmed, and that if said sale was fairly held and adequately attended, and said bids are adequate and reasonable, the sales to said bidders should be confirmed; and the Referee further finds that the aggregate amount bid for the property offered is substantially in excess of the appraised value thereof and very greatly in excess of the value fixed thereon by Joseph M. Brown,

Secretary-Treasurer of the bankrupt, in his testimony 72 at the first meeting of creditors, and that, with the exceptions hereinafter noted, said sales should be approved and confirmed; and accordingly, it is now

Ordered that said report of sale of the Trustee and the acts and doings of said Trustee by him therein reported be, and they are, approved; that the sale of the real estate described in said report, to Charles Green of Chicago, Illinois, for the sum of \$18,750.00 be, and it is, approved and confirmed; that the sale of the one ton automobile truck to DeKalb Seed Company of DeKalb, Illinois, for \$1,350.00 be, and it is, approved and confirmed; that the sale of the one and one-half ton truck to L. Hoffman of Peru, Indiana, for the sum of \$2,000.00 be, and it is, approved and confirmed; that the sale of the Airplane, referred to in the report of sale as Parcel 4, to F. Wambaugh of Elkhart, Indiana, for the sum of \$575.00 be, and it is, approved and confirmed; and that the sales of the personal property when offered piecemeal, as reported by the Trustee and as shown in detail in the report of the auctioneer to the various high bidders therefor, be, and they are, approved and confirmed with the following exceptions: The sale of a heater, known as Lot No. 530, in the sum of \$20.00; the sale of the good will, which was included in Parcel No. 6 but was not designated by lot number, in the sum of \$140.00; the sale of said heater and of said good will being hereby expressly disapproved and the Trustee ordered to reject the bids therefor; the sales of all of said assets hereinabove confirmed to be free and clear of all liens and en-

encumbrances except the property taxes upon said real estate for the year 1944, payable in 1945, to which said real estate is sold subject, all valid and subsisting liens and encumbrances of which said assets are sold free and clear to follow and attach to the proceeds derived from the sale thereof and to be paid therefrom.

It Is Further Ordered that the Trustee be, and is, upon receipt of the purchase price of the assets sold and the sale whereof is herein confirmed, authorized and directed to deliver said property to the respective purchasers thereof and to execute such instruments as may be necessary to evidence the transfer of title thereto.

Dated at Indianapolis, Indiana, this the third day of May, 1944.

(Signed) Earl Wilde,  
*Referee in Bankruptcy.*

CC  
James C. Sansberry  
Conrad S. Arnkens  
Bamberger & Feibleman  
Paul A. Pfister  
William C. Moore  
Philip B. O'Neill  
Hubert Hickam

74 The said order is erroneous for the following reasons:

a) Said Referee in Bankruptcy and said Court was without jurisdiction to enter said order or any order affecting the assets and property of the bankrupt.

b) Said Court did not have jurisdiction over the assets of this bankrupt for the reason that the said bankrupt did, on the 19th day of April, 1944, file in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri its petition as a subsidiary corporation of the Christopher Engineering Company, a corporation, in the reorganization proceedings pending in said United States District Court at St. Louis, Missouri, being Cause No. 10947 under Chapter X of the Bankruptcy Act, and said petition of said National Aircraft Corporation, a subsidiary, was duly approved as properly filed under Chapter X of the Bankruptcy Act on the said 19th day of April, 1944, and by reason thereof, the said United States District Court for the Eastern Division of the East-



ern Judicial District of Missouri was vested with sole and exclusive jurisdiction over the assets of the National Aircraft Corporation, wherever located, and all proceedings in this cause were stayed.

Wherefore, your petitioner prays for a review of the said order by the judge and that the said order be vacated and set aside.

Jerome F. Duggan,  
*Trustee of the Estate of Christopher  
 Engineering Company, a corporation,  
 and Trustee of the Estate of National  
 Aircraft Corporation, a corporation,  
 pending in reorganization proceed-  
 ings under Chapter X of the Bank-  
 ruptcy Act in the United States Dis-  
 trict Court for the Eastern Division  
 of the Eastern Judicial District of  
 Missouri.*

United States of America }  
 State of Missouri }  
 City of St. Louis }

Jerome F. Duggan, who, first being duly sworn on his oath, states that the matters and facts hereinabove set forth are true to the best of his knowledge, information and belief.

Jerome F. Duggan.

Subscribed and sworn to before me this 5th day of May, 1944.

Noah Weinstein,

(Seal)

*Notary Public*

My Commission expires: March 13th, 1948.

75

IN THE UNITED STATES DISTRICT COURT.

(Caption—9401)

PETITION FOR STAY PENDING REVIEW BY  
JUDGE.

To the Honorable Carl Wilde, Esq., Referee in Bankruptcy.

The petition of Jerome F. Duggan, Trustee, respectfully represents:

1) On the 10th day of May, 1944, he filed herein a petition to review a certain order entered herein on or about the 2nd day of May, 1944, wherein the sale of the assets of the bankrupt was approved.

2) He believes that the said order is erroneous for the reasons set out in his said petition for review and he has not filed the said petition for the purpose of delay.

Wherefore, your petitioner prays that an order be entered staying the enforcement of said order.

Respectfully submitted,

Jerome F. Duggan,

*Trustee of the Estate of Christopher Engineering Company, a corporation, and Trustee of the Estate of National Aircraft Corporation, a corporation, pending in reorganization proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri.*

United States of America, }  
State of Missouri, } ss.  
City of St. Louis.

Jerome F. Duggan, first being duly sworn on his oath, states that the matters and facts hereinabove set forth are true to the best of his knowledge, information and belief.

Jerome F. Duggan.

Subscribed and sworn to before me this 5th day of May, 1944.

(Seal)

Noah Weinstein,  
Notary Public.

My commission expires March 13th, 1948.

76 The following is a copy of an order made by the Referee on May 16, 1944:

77 IN THE UNITED STATES DISTRICT COURT.

\* \* \* (Caption—9401) \* \*

On May 10, 1944, Phil O'Neill of Anderson, Indiana, Attorney for Jerome F. Duggan of Christopher Engineering Company; filed in the office of the undersigned Referee a petition subscribed by Jerome F. Duggan, as Trustee of the Estate of Christopher Engineering Company, a corporation, and as Trustee of the Estate of National Aircraft Corporation, a corporation, pending in reorganization proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, for the review of an order entered by said Referee on May 3, 1944; which petition is in the words and figures following, to-wit: (Here insert); and on the same day said Phil O'Neill also filed a petition for the review of the same order, which petition is signed by National Aircraft Corporation by J. M. Brown, Secretary-Treasurer, which said petition is in the words and figures following, to-wit: (Here insert). Neither petition was in duplicate as required by Rule 19 of the Rules of the District Court of the United States for the Southern District of Indiana, and neither petition was accompanied by brief as required by said Rule. James C. Sansberry, Trustee in Bankruptcy herein, has reported

78 to the Referee that neither a copy of the petition of Duggan, Trustee, nor that purporting to be the petition of National Aircraft Corporation has been served upon him as required by the provisions of Section 39c of the Bankruptcy Act, but that he, the said Sansberry, happened to meet said Phil O'Neill on the street and that said Phil O'Neill advised him that he had filed the petition for review purporting to be that of National Aircraft Corporation and said O'Neill permitted said Sansberry to come to his office to make a copy of said petition.

In order to permit compliance with the Rule by the filing of briefs in support of said respective petitions, the Referee deferred actions upon said petitions.

It seems obvious that the failure of the petitioners for review to comply with the Rules of Court and the provi-

sions of the Bankruptcy Act in respect to the filing of such petitions would justify the denial thereof. In order, however, to resolve all doubts in favor of the petitioners and so that the matter may be presented to the Judge of the United States District Court for the Southern District of Indiana, the Referee finds that said petition should be granted. Clearly, however, under the provisions of Paragraph (d) of said Rule 19, the petitioners have waived their right to file briefs.

Accompanying each of the petitions for review aforesaid is a petition for an order to stay the enforcement of the order of May 3, 1944, approving and confirming the sales made by the Trustee. No offer to indemnify the estate against loss has been made by either of the petitioners.

The Referee is informed by James C. Sansberry, Trustee in Bankruptcy herein, that by far the major portion of the personal property of the estate has been delivered to the purchasers thereof. The sales approved and confirmed are highly advantageous to the estate. To stay the enforcement of the order in respect to the small amount of personal property remaining undelivered to the purchasers would not benefit the petitioners and would entail loss and expense to the estate. The Referee finds, therefore, that such petitions for an order staying the enforcement of the order approving and confirming the sale should be denied.

It Is, Therefore, Ordered that the petitions for review of the order entered on May 3, 1944, being the petition of Jerome F. Buggan, Trustee, and the purported petition of National Aircraft Corporation, the above named bankrupt, be and they are granted, and that the Referee file his certificate covering both of said petitions in the office of the Clerk of the Court; and that the petitions for an order staying the enforcement of the order entered on May 3, 1944, be, and they each of them are, denied.

Carl Wilde,

*Referee in Bankruptcy.*

Entered May 16, 1944.

cc

Barabarger & Feibleman  
James C. Sansberry  
Hubert Hickam  
Phil O'Neill

56. *Suggestions, Etc., and Motion for Stay.*

80 The following is a copy of Suggestion Of Superseding Reorganization Proceedings And Motion To Stay Proceedings filed with the Clerk of this Court on May 10, 1944:

81 IN THE UNITED STATES DISTRICT COURT.  
\* \* (Caption—9401) \* \*

**SUGGESTION OF SUPERSEDING REORGANIZATION PROCEEDINGS AND MOTION TO STAY PROCEEDINGS.**

(Filed May 10, 1944.)

To the Honorable Robert C. Baltzell, Judge of the United States District Court for the Southern District of Indiana, Indianapolis Division:

The petition of Jerome F. Duggan, Trustee, respectfully represents:

Your petitioner is the duly appointed, qualified and acting Trustee of the estate of Christopher Engineering Company, a corporation in a proceeding under Chapter X of the Bankruptcy Act, which was filed on the 27th day of December, 1943, in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, and which said petition was duly approved as properly filed on said same date and on said same date your petitioner was duly appointed and qualified as Trustee therein and has been ever since acting in said capacity. That in said same proceedings the National Aircraft Corporation did, as a subsidiary corporation of the said Christopher Engineering Company, filed its petition as such subsidiary on the 19th day of April, 1944, and on said same date the said United States District Court for the Eastern Division of the Eastern Judicial District of Missouri did approve said petition of said National Aircraft Corporation as being properly filed and did, on said same date in said same order, appoint your petitioner as the Trustee of said National Aircraft Corporation, and your petitioner did thereupon duly qualify as such Trustee and has been ever since acting in said capacity.

Attached hereto, and by express reference made a part hereof, is a certified copy of petition of National Aircraft

Corporation above referred to and the order of the United States District Court of April 19, 1944, approving same.

That by reason of the above facts, this Court and its Referee in Bankruptcy, Carl Wilde, ceased to have any jurisdiction over the assets of the National Aircraft and from on and after the 19th day of April, 1944, the sole and exclusive jurisdiction over the National Aircraft Corporation and its property and assets was vested in the

United States District Court for the Eastern Division of the Eastern Judicial District of Missouri.

Wherefore, your petitioner respectfully prays that this Court enter an order staying any further proceedings in the pending bankruptcy case of the National Aircraft Corporation, and that it further enter its order holding for naught all action taken and orders entered by this Court or the said Referee in Bankruptcy in the National Aircraft Corporation bankruptcy proceeding pending before this Court, which action was taken or orders entered on or after April 19, 1944, and particularly all proceedings for the sale of the assets or property of the National Aircraft Corporation or other proceedings calculated to withdraw any property of the National Aircraft Corporation from any contemplated plan of reorganization in connection with its parent corporation.

Respectfully submitted,

Jerome F. Duggan,

*Trustee of the Estate of Christopher Engineering Company, a corporation, and Trustee of the Estate of National Aircraft Corporation, a corporation, pending in reorganization proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri.*



United States of America, }  
 State of Missouri, }  
 City of St. Louis. }

Jerome F. Duggan, first being duly sworn on his oath, states that the matters and facts hereinabove set forth are true to the best of his knowledge, information and belief.

Jerome F. Duggan.

Subscribed and sworn to before me this 5th day of May, 1944.

/s/ Noah Weinstein;  
*Notary Public.*

My Commission expires:

82 IN THE UNITED STATES DISTRICT COURT,  
 Eastern District of Missouri.  
 \* \* (Caption—10947) \* \*

**NATIONAL AIRCRAFT CORPORATION, SUBSIDIARY CORPORATION'S PETITION FOR REORGANIZATION.**

To the Honorable George H. Moore, Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri.

The National Aircraft Corporation, a corporation, a subsidiary of the debtor herein, for its petition in the above entitled proceedings for the corporate reorganization of Christopher Engineering Company, a corporation, the principal debtor, respectfully shows that:

1) This subsidiary corporation is a corporation duly organized under the laws of the State of Indiana.

2) This subsidiary is not a municipal, insurance or banking corporation, nor a building and loan association, nor a railroad corporation; but it is a business corporation which could become a bankrupt under Section 4 of the Bankruptcy Act.

3) The majority of the capital stock of this subsidiary corporation having power to vote for the election of directors is owned directly by the debtor or indirectly through nominees.

4) This subsidiary corporation is unable to meet its

debts as they mature, and it desires to effect a plan of reorganization in connection with the plan of corporate reorganization of the debtor.

5) The nature of the debtor's business is the manufacturing of aircraft and aircraft parts.

83 6) The nature of all pending proceedings affecting the property of the debtor, so far as is known, and the courts in which they are pending, are as follows:

An involuntary petition in bankruptcy was filed against this subsidiary corporation in the United States District Court for the Southern District of Indiana, Indianapolis Division, in Cause No. 9401, and an order of adjudication was entered in said proceeding and the matter referred to the Honorable Carl Wilde as Referee in Bankruptcy, and in said proceeding James C. Sansberry was duly appointed, and is now acting as trustee in bankruptcy. Said trustee in said bankruptcy proceeding has taken possession of all the assets of this subsidiary corporation located in Elwood, Indiana, and has advertised a sale thereof to be held on the 20th day of April, 1944, and has retained the firm of Samuel L. Winternitz & Company, Inc., as auctioneers to conduct said sale commencing on said aforementioned date.

7) The assets, liabilities, capital stock and financial condition of your petitioner are as follows:

(a) The assets of your petitioner consist of real estate and factory building, equipment, machinery and inventory, all located in Elwood, Indiana, and accounts receivable, all of an aggregate clear value of approximately \$150,000.00.

(b) The liabilities of your petitioner, exclusive of its capital stock, consist of accounts payable and other claims in the amount of approximately \$90,000.00. In addition, the records of the company indicate liabilities in the nature of a claim of the United States government amounting to approximately \$150,000.00. It is your petitioner's opinion that this is not in reality a claim that must be paid by the debtor. Another group of claims aggregating approximately \$170,000.00 will also appear on the records of your debtor.

84 However, your petitioner states that these claims are actually claims against the United States government and will or should be paid, by the United States government.

(c) The issued capital stock of your petitioner is \$30,000.00 in \$100.00 par value common stock.

8) In order for your petitioner to obtain relief it is necessary that the proceedings now pending in the bankruptcy court in Indianapolis, Indiana, be permanently enjoined and that the rights of unsecured creditors be modified, and an extension of time of payment of unsecured debts be given your petitioner, and your petitioner can not obtain adequate relief under Chapter XI of the Bankruptcy Act. Your petitioner believes that its assets are of a value in excess of its total liabilities, but the nature of its assets is such that their true value is not readily realizable; a forced sale of said assets would bring substantially less than its total liabilities.

Wherefore, this subsidiary corporation prays that this petition be approved as properly filed under Chapter X of the Bankruptcy Act, and that further proceedings be had in accordance with said section, as part of or in connection with the corporate reorganization proceedings of the principal debtor herein.

Your petitioner further prays that this Court enter its order restraining and enjoining any further steps or proceedings in the bankruptcy case in the United States District Court for the Southern District of Indiana, Indianapolis Division, being Case No. 9401, and that James C. Sansberry, the trustee in said bankruptcy proceeding, be restrained and enjoined from taking any steps of any kind affecting or in relation to any of the property or assets of the National Aircraft Corporation, and that James C. Sansberry, trustee, be ordered and directed to forthwith turn over and deliver to your petitioner, or to such trustee as may be appointed herein, all the assets and property of this petitioner, and that Samuel L. 85 Winternitz & Company, Inc., its agents, employees and representatives, be enjoined from taking any action or steps of any kind affecting the property and assets of your petitioner, and that they be further restrained and enjoined from proceeding with and selling said assets.

National Aircraft Corporation,  
a corporation,

By J. M. Brown,  
*Petitioner.*

Noah Weinstein,  
Geo. O. Durham,  
B. Sherman Landau,  
*Attorneys for Petitioner.*

*Order Approving Petition.*

61

State of Missouri }  
City of St. Louis } ss.

J. M. Brown makes solemn oath that he is Secretary of the National Aircraft Corporation, a corporation, the petitioner named in the foregoing petition, and is duly authorized to make said petition and this affidavit in its behalf, and that the statements contained in said petition are true according to the best of his knowledge, information, and belief.

J. M. Brown.

Subscribed and sworn to before me this 18th day of April, 1944.

Henry J. Jacobsmeyer,

(Seal)

*Notary Public.*

My commission expires: June 2, 1944.

Endorsed: "Filed Apr. 19, 1944. Jas. J. O'Connor, Clerk."

86

IN THE UNITED STATES DISTRICT COURT,

Eastern District of Missouri.

\* \* (Caption—10947) \* \*

ORDER APPROVING PETITION OF SUBSIDIARY CORPORATION, ETC.

At St. Louis, in said division of said district, this 19th day of April, 1944.

This cause, coming on to be heard on the petition of National Aircraft Corporation, a corporation, praying that proceedings be had under Chapter X of the Bankruptcy Act in connection with the said National Aircraft Corporation, a wholly owned subsidiary of the Christopher Engineering Company, the principal debtor, and after hearing attorneys for said subsidiary corporation in favor of said petition.

Now, upon said petition, and all the proceedings had before me at the said hearing, and due deliberation having been had thereon: the

**Court Does Find**

1. That the National Aircraft Corporation is a wholly owned subsidiary of the Christopher Engineering Company, a corporation, the principal debtor herein, and is entitled to file its petition in these proceedings of its parent company.

2. That the indebtedness of National Aircraft Corporation, liquidated as to amount and not contingent as to liability, is less than Two Hundred and Fifty Thousand Dollars (\$250,000.00).

3. That Jerome F. Duggan, Esq., is qualified to be trustee herein.

87 4. That said petition of National Aircraft Corporation complies with the requirements of Chapter X of the Bankruptcy Act.

5. That said petition of National Aircraft Corporation has been filed in good faith; and it is

Ordered, Adjudged and Decreed

6. That said petition be, and it hereby is, approved.

7. That Jerome F. Duggan, Esq., be, and he hereby is, appointed trustee of said National Aircraft Corporation, and said trustee upon filing a bond, as hereinafter provided, shall be vested with all the title and, to the extent consistent with said Chapter X, shall be vested with the same rights, shall be subject to the same duties, and shall exercise the same powers as a trustee appointed pursuant to Section 44 of said Act, and shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of said subsidiary debtor.

8. That the bond of Jerome F. Duggan as Trustee of the estate of the Debtor heretofore filed and approved herein be extended to cover the liabilities of said Trustee as Trustee of National Aircraft Corporation to the same extent as said bond covers his liabilities as Trustee of the Debtor herein; the extension of such bond, approved by the Court, shall be promptly filed herein.

9. That said trustee be, and he hereby is, authorized to operate the business and manage the property of said subsidiary debtor until such time as this court shall otherwise prescribe, and during such operation and management, the said trustee shall file with this court, in duplicate, not later than the 15th day of each month, a report and summary of the operations of the business and the

management of the property of the within estate during the preceding month, which report shall include a classified statement of receipts and disbursements, indebtedness incurred, credit extended, contractual and other obligations assumed, and a profit and loss statement.

88 10. That without in any way limiting the generality of paragraphs numbered 7 and 9 hereof, and to the extent consistent with Chapter X of said Act, said trustee shall have full power and authority until the further order of this court,

(a) To employ, discharge and fix the compensation, salaries and wages of all managers, agents, employees and servants, as he may deem necessary and advisable for the proper operation of the business and the management, preservation and protection of the property of said subsidiary debtor.

(b) To purchase or otherwise acquire for cash or on credit, such materials, equipment, machinery, supplies, services or other property, as he may deem necessary and advisable in connection with the operation of said business and the management and preservation of said property;

(c) To sell merchandise, supplies and other property, and to render services, for cash or on credit;

(d) To enter into any contracts incidental to the normal and usual operation of said business and the management and preservation of said property;

(e) To keep the property of the within estate insured in such manner and to such extent as he may deem necessary and advisable;

(f) To collect and receive all rents, issues, income and profits, and all outstanding accounts, things in action and credits due or to become due to the within estate, and to hold and retain all monies thus received to the end that the same may be applied under this and different or further orders of this court;

(g) To do any and all such things and to incur such other expenses as may be necessary and advisable in the property management and conduct of the affairs of said subsidiary debtor and in the preservation and protection of the property and assets of the within estate;

(h) To institute, prosecute, defend, compromise, adjust, intervene in or become a party to such other actions or proceedings in law or in equity, in state or  
89 federal courts, as may in his judgment be necessary or advisable for the protection, maintenance and



preservation of the property and assets of the within estate.

11. That until the further order of this court, said trustee, in his discretion, be, and he hereby is, authorized to pay from time to time out of any and all funds now or hereafter coming into his hands and available for such purposes:

(a) All taxes and similar charges lawfully incurred in the operation of the business and the preservation and maintenance of the property and assets of the within estate since the filing of said petition;

(b) All proper expenses and obligations incurred by him on or after the date of this order in operating the business and preserving and maintaining the property and assets of the within estate, as herein authorized, including among other expenses and obligations, the reasonable wages, salaries and compensation of all managers, agents, employees and servants, other than officers, employed by him;

(c) The cost of maintaining the corporate existence of said subsidiary debtor, including necessary expenses for the preservation of records;

(d) The expense of printing and mailing and of publishing notices to creditors, stockholders and all other parties in interest of proceedings taken hereunder, and of printing the pleadings, motions, petitions and orders now on file or hereafter filed in this case reasonably necessary to be printed.

12. That said trustee shall close the present books of account of said subsidiary debtor, as of the close of business on the date of the entry of this order, and shall open new books of account, as of the opening of business on the next succeeding business day, in which new books of account he shall cause to be kept proper account of his earnings, expenses, receipts, disbursements and all obligations incurred and transactions had in the operation of the business and the management, preservation and protection of the property of the within estate; and said trustee shall preserve proper vouchers for all payments made on account of such disbursements.

13. That said trustee be, and he hereby is, directed to investigate the acts, conduct, property, liabilities and financial condition of said subsidiary debtor, the opera-

tion of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and shall make and deliver a report thereon to the judge not later than sixty (60) days from the date hereof, and, within ten (10) days after the delivery of such report, shall make application to the judge for a direction as to the form and manner of a brief statement thereof to be submitted to the creditors and stockholders and such other persons as the judge may designate.

14. That until final decree or the further order of this court, all creditors and stockholders, and all sheriffs, marshals and other officers, and their respective attorneys, servants, agents and employees, and all other persons, firms and corporation be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity against said subsidiary debtor or said trustee in any court, or from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or enforcing a lien upon any property owned by or in the possession of the said subsidiary debtor of said trustee, and from doing any act or thing whatsoever to interfere with the possession or management by said subsidiary debtor or said trustee of the property and assets of the within estate, or in any way interfere with said trustee in the discharge of his duties herein, or to interfere in any manner during the

91 pendency of this proceeding with the exclusive jurisdiction of this court over said subsidiary debtor and said trustee and their respective properties; and all persons, firms or corporations owning any lands or buildings occupied by said subsidiary debtor of said trustee or wherein is contained any property of the within estate be, and they hereby are, jointly and severally, stayed, pending the further order of this court, from removing or interfering with any such property.

16. That James C. Sansberry, heretofore appointed trustee in the bankruptcy proceeding pending in the United States District Court for the Southern District of Indiana, Indianapolis Division, which proceedings are now

pending before the Honorable Carl Wilde, Referee in Bankruptcy for said Division and District, be, and is hereby, restrained and enjoined from doing any act or thing whatsoever affecting the property and assets of the National Aircraft Corporation, and he is further enjoined and restrained from doing any act or thing whatsoever to interfere with the right of the trustee herein to the immediate possession or management of the property and assets of the National Aircraft Corporation, and he is further restrained and enjoined from interfering with the trustee herein in the discharge of his duties in this proceeding, and he is further ordered and directed to forthwith turn over and deliver unto the trustee herein all of the property and assets of the National Aircraft Corporation in his possession or under his control.

16. That Samuel I. Winternitz & Company, Inc., its agents, officers, employes and servants, be, and they are hereby jointly and severally restrained and enjoined from selling or attempting to sell the assets or any part thereof belonging to the National Aircraft Corporation; and they are further restrained and enjoined from doing any act or thing whatsoever affecting the property and assets of the National Aircraft Corporation.

92 17. That this court reserves full right and jurisdiction to make at any time and from time to time such orders for the purpose of vacating, amplifying, extending, limiting or otherwise modifying this order, as the court shall deem proper.

Geo. H. Moore,  
*United States District Judge.*

Endorsed: "Filed Apr. 19, 1944. Jas. J. O'Connor, Clerk."

This writ came to hand from J. M. Brown, attorney, 705 Olive Street, St. Louis, Missouri, at 8:00 A. M. at Indianapolis, Indiana, April 20, 1944.

Julius J. Wichser,  
*U. S. Marshal.*  
By Robert G. Newbold,  
*Chief Deputy U. S. Marshal.*

Received this writ at Indianapolis, Indiana on April 20, 1944 and on the same day served it upon the with-named James C. Sansberry, Trustee, personally, and Samuel L.

*Order Approving Petition.*

67

Winternitz & Co. by Adolph J. Winternitz, Vice President, personally, at 9:30 A. M. at Elwood, Indiana.

Julius J. Wichser,

*U. S. Marshal,*

By Andrew M. Taff,

*Deputy.*

2 Services — \$4.00

Expense — 4.09

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\$8.09

Endorsed: "Filed Apr. 22, 1944. Jas. J. O'Connor, Clerk."

93 United States of America }  
Eastern District of Missouri } ss.

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original Petition for Reorganization and Order Approving Petition of Subsidiary Corporation, etc., both filed April 19, 1944, in the Matter of Christopher Engineering Company, a corporation, Debtor, in Proceedings for the Reorganization of a Corporation, No. 10947, by National Aircraft Corporation, a corporation, a Subsidiary corporation of Christopher Engineering Company, a corporation; also copy of return (executed) of United States Marshal at Indianapolis, Indiana, filed April 22, 1944, in the aforesaid cause, and now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri this 5th day of May, A. D. 1944.

James J. O'Connor,

(Seal)

*Clerk:*

By John A. Oldendorph,

*Deputy Clerk.*

94 And afterwards to wit at the May Term of said Court on the 5th day of June, 1944, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

95 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—9401B) \* \*

ORDER FOR JUNE 5, 1944.

This matter being submitted to the Court upon the petition filed by the National Aircraft Corporation and the petition filed by Jerome F. Duggan, as Trustee of the Estate of Christopher Engineering Company and as Trustee of the Estate of National Aircraft Corporation, a corporation, pending in reorganization proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, for review of the order made and entered by the Referee in Bankruptcy on the 3rd day of May, 1944, and the Referee's certificate thereon filed herein on the 18th day of May, 1944, and the Court being duly advised;

It Is Ordered by the Court that the petition for review of the National Aircraft Corporation and the petition for review of Jerome F. Duggan, as Trustee of the Estate of Christopher Engineering Company and as Trustee of the Estate of National Aircraft Corporation, a corporation, pending in reorganization proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, each be, and each petition is, hereby overruled, and the finding and order made and entered herein by Carl Wilde, Referee in Bankruptcy on the 3rd day of May, 1944, be, and the same is, hereby adopted, approved and affirmed.

96 The following is a copy of Notice of Appeal to Circuit Court of Appeals filed with the Clerk on June 29, 1944 by Jerome F. Duggan, Trustee:

97 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana,

Indianapolis Division.

In the Matter of  
National Aircraft Corporation,  
a corporation,  
Bankrupt. } No. 9401 B.

NOTICE OF APPEAL TO CIRCUIT COURT OF  
APPEALS.

(Filed June 29, 1944. Albert C. Sogemeier, Clerk.)

Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company, a corporation, in proceedings under Chapter X of the Bankruptcy Act, and Trustee of the Estate of National Aircraft Corporation, a corporation, a subsidiary, in reorganization proceedings under Chapter X of the Bankruptcy Act, pending in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from the order of this Court of June 5th, 1944, overruling the petition for review by Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company, a corporation, and Trustee of the Estate of National Aircraft Corporation, a corporation, of the order made and entered by the Referee in Bankruptcy on May 3rd, 1944, approving and confirming the sale of the assets of the said bankrupt, which said order of the United States District Court of June 5th, 1944, adopted, approved and affirmed the finding and order made and entered by said Referee in Bankruptcy on the said 3rd day of May, 1944.

Jerome F. Duggan,  
*Attorney pro se.*  
Philip B. O'Neill,  
Anderson, Ind.

6/29/44—Copy mailed to Bamberger & Feibleman.  
Albert C. Sogemeier FEK.



98 The following is a copy of Assignment of Errors filed with the Clerk on June 29, 1944 by Jerome F. Duggan, Trustee:

99 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—9401B) \* \*

### ASSIGNMENT OF ERRORS.

Comes now Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company, a corporation, in proceedings under Chapter X of the Bankruptcy Act, and Trustee of the Estate of National Aircraft Corporation, a corporation, a subsidiary, in reorganization proceedings under Chapter X of the Bankruptcy Act, pending in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, appellant, and files this, his assignment of errors, complaining as follows:

(1) That the said Court was without jurisdiction in making said order.

(2) That prior to the entry of said order, the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri had, by lawful order, acquired and retained full and complete jurisdiction over the assets of the National Aircraft Corporation, to the exclusion of all jurisdiction of this Court.

(3) That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri has sole and exclusive jurisdiction over the property and assets of the National Aircraft Corporation by virtue of reorganization proceedings pending before said Court and by reason thereof, the said United States District Court  
100 for the Southern District of Indiana, Indianapolis

Division, was without authority or jurisdiction to enter its aforesaid order and said aforesaid order was and is void and in excess of the jurisdiction of said Court, and in violation of and an infringement on and usurpation of the superior and superseding jurisdiction of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, as conferred by the Chandler Act.

(4) That the order appealed from operates to deny to the National Aircraft Corporation due process of law and

the equal protection of the law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States, and denies to the National Aircraft Corporation the benefits of the provisions of the Chandler Act, awarding to subsidiary corporations generally the privileges of reorganization in a common place with its parent corporation.

Jerome F. Duggan, Trustee,

/s/ Jerome F. Duggan,

Attorney pro se.

/s/ Philip B. O'Neill,

Anderson, Ind.

101 The following is a copy of the Statement of Points filed with the Clerk on August 1, 1944 by Jerome F. Duggan, Trustee:

102 IN THE DISTRICT COURT OF THE UNITED STATES.  
(Caption—9401 B)

STATEMENT OF POINTS TO BE RELIED UPON  
BY APPELLANT JEROME F. DUGGAN, TRUSTEE,  
ON APPEAL.

Comes now Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company, a corporation, in proceedings under Chapter X of the Bankruptcy Act, and Trustee of the Estate of National Aircraft Corporation, a corporation, a subsidiary, in reorganization proceedings under Chapter X of the Bankruptcy Act, pending in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, appellant, and respectfully states that he will, on his appeal from the order of the District Court made and entered on the 5th day of June, 1944, rely upon the following statement of points, namely:

1) That the said Court was without jurisdiction in making said order.

2) That prior to the entry of said order, the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri had, by lawful order, acquired and retained full and complete jurisdiction over the assets of the National Aircraft Corporation, to the exclusion of all jurisdiction of this Court.

3) That the United States District Court for the East

ern Division of the Eastern Judicial District of Missouri has sole and exclusive jurisdiction over the property and assets of the National Aircraft Corporation by virtue of reorganization proceedings pending before said Court and by reason thereof, the said United States District Court for the Southern District of Indiana, Indianapolis Division, was without authority or jurisdiction to enter its aforesaid order and said aforesaid order was and is void and in excess of the jurisdiction of said Court, and in violation of and in infringement on and usurpation of the superior and superseding jurisdiction of the 103 United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, as conferred by the Chandler Act.

4) That the order appealed from operates to deny to the National Aircraft Corporation due process of law and the equal protection of the law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States, and denies to the National Aircraft Corporation the benefits of the provisions of the Chandler Act, awarding to subsidiary corporations generally the privileges of reorganization in a common place with its parent corporation.

Jerome F. Duggan, *Trustee*.

Jerome F. Duggan,

*Attorney pro se.*

Copies of the above Statement of Points mailed, postage prepaid, this 31st day of July 1944, to

James C. Sansberry, Trustee

938 Meridian Street

Anderson, Indiana

Conrad S. Arnkens

Attorney at Law

Citizens Bank Bldg.

Anderson, Indiana

Bamberger & Feibleman

Attorneys at Law

901 Security Trust Bldg.

Indianapolis, Indiana

Noah Weinstein.

104 The following is a copy of Notice of Appeal to Circuit Court of Appeals filed with the Clerk on June 29, 1944 by National Aircraft Corporation:

105 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana,

Indianapolis Division.

In the Matter of

National Aircraft Corporation,

a corporation.

Bankrupt.

} No. 9401-B

NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS.

(Filed June 29, 1944. Albert C. Sogemeier, Clerk.)

Notice is hereby given that National Aircraft Corporation, a corporation, the bankrupt herein, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from the order of this Court of June 5th, 1944, overruling the petition for review by the National Aircraft Corporation of the order made and entered by the Referee in Bankruptcy on May 3rd, 1944, approving and confirming the sale of the assets of the said bankrupt, which said order of the United States District Court of June 5th, 1944, adopted, approved and affirmed the finding and order made and entered by said Referee in Bankruptcy on the said 3rd day of May, 1944.

Pence-O'Neill-Diven, Anderson, Ind.,

P. B. O'Neill,

Geo. O. Durham,

Noah Weinstein,

*Attorneys for National Aircraft Corporation.*

6/29/44—Copy of notice of appeal mailed to Bamberger & Feibleman. Albert C. Sogemeier. FEK

106 The following is a copy of Assignment of Errors filed with the Clerk on June 29, 1944 by National Aircraft Corporation:

107 IN THE DISTRICT COURT OF THE UNITED STATES

\* \* (Caption—9401 B) \* \*

## ASSIGNMENT OF ERRORS.

Comes now National Aircraft Corporation, a corporation, appellant, and files this, its assignment of errors, complaining as follows:

1) That the said Court was without jurisdiction in making said order.

2) That prior to the entry of said order, the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri had, by lawful order, acquired and retained full and complete jurisdiction over the assets of the National Aircraft Corporation to the exclusion of all jurisdiction of this Court.

3) That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri has sole and exclusive jurisdiction over the property and assets of the National Aircraft Corporation by virtue of reorganization proceedings pending before said Court and by reason thereof, the said United States District Court for the Southern District of Indiana, Indianapolis Division, was without authority or jurisdiction to enter its aforesaid order and said aforesaid order was and is void and in excess of the jurisdiction of said Court and in violation of and an infringement on and usurpation of the superior and superseding jurisdiction of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, as conferred by the Chandler Act.

4) That the order appealed from operates to deny to the appellant due process of law and the equal protection of the law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States, and denies to the appellant the benefits of the provisions of the Chandler Act, awarding to subsidiary corporations generally the privilege of reorganization in a common place with its parent corporation.

National Aircraft Corporation,

by

Pence, O'Neill & Diven, Anderson, Ind.

/s/ P. B. O'Neill,

/s/ Geo. O. Durham,

/s/ Noah Weinstein,

*Attorneys.*

109 The following is a copy of the Statement of Points filed with the Clerk on August 1, 1944 by National Aircraft Corporation:

110. IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—9401 B) \* \*

STATEMENT OF POINTS TO BE RELIED UPON  
BY APPELLANT, NATIONAL AIRCRAFT CORPORATION, ON APPEAL.

(Filed Aug. 1, 1944. Albert C. Sogemeier, Clerk.

Comes now National Aircraft Corporation, a corporation, appellant, and respectfully states that it will, on its appeal from the order of the District Court made and entered on the 5th day of June, 1944, rely upon the following statement of points, namely:

1) That the said Court was without jurisdiction in making said order.

2) That prior to the entry of said order, the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, had, by lawful order, acquired and retained full and complete jurisdiction over the assets of the National Aircraft Corporation to the exclusion of all jurisdiction of this Court.

3) That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri has sole and exclusive jurisdiction over the property and assets of the National Aircraft Corporation by virtue of reorganization proceedings pending before said Court and by reason thereof, and said United States District Court for the Southern District of Indiana, Indianapolis Division, was without authority or jurisdiction to enter its aforesaid order and said aforesaid order was and is void and in excess of the jurisdiction of said Court and in violation of and an infringement on and usurpation of the superior and superseding jurisdiction of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, as conferred by the Chandler Act.

111. 4). That the order appealed from operates to deny to the appellant due process of law and the equal protection of the law, contrary to the provision of the Fifth



*Statement of Points.*

Amendment to the Constitution of the United States, and denies to the appellant the benefits of the provisions of the Chandler Act, awarding to subsidiary corporations generally the privilege of reorganization in a common place with its parent corporation.

National Aircraft Corporation  
by

Geo. O. Durham,  
Noah Weinstein,  
B. Sherman Landau,

*Attorneys.*

Copies of the above Statement of Points mailed, postage prepaid, this 31st day of July, 1944, to

James C. Sansberry, Trustee  
938 Meridian Street  
Anderson, Indiana

Conrad S. Arnkens  
Attorney at Law  
Citizens Bank Bldg.  
Anderson, Indiana

Bamberger & Feibleman  
Attorneys at Law  
901 Security Trust Bldg.  
Indianapolis, Indiana

Noah Weinstein.

112 The following are copies of Appeal Bonds filed with the Clerk on July 1, 1944 by Jerome F. Duggan, Trustee and National Aircraft Corporation:

113      Maryland Casualty Company,  
   Baltimore.

In the United States District Court.

o In the Matter of  
National Aircraft Corporation,  
a corporation bankrupt #9401,  
in bankruptcy.

We, the undersigned, undertake to pay the costs charge-  
able in the above-entitled appeal of bankruptcy cause  
without relief of valuation.

Witness our hands, this 29th day of June, 1944.

/s/ Jerome F. Duggan  
Jerome F. Dugan, *Trustee*  
National Aircraft Corporation.  
Maryland Casualty Company  
By /s/ John W. Brouwer,

(Seal)

*Attorney-in-fact.*

114      Maryland Casualty Company,  
   Baltimore.

In the United States District Court.

In the matter of  
National Aircraft Corporation,  
a corporation bankrupt #9401,  
in bankruptcy.

We, the undersigned, undertake to pay the costs charge-  
able in the above-entitled appeal of bankruptcy cause  
without relief of valuation.

Witness our hands, this 29th day of June, 1944.

National Aircraft Corporation  
By /s/ J. M. Brown.  
*Secretary.*

Maryland Casualty Company  
By /s/ John W. Brouwer,

(Seal)

*Attorney-in-fact.*

115      The following is a copy of Appellants' Joint Desig-  
nation of the Portions of the Record, Proceedings and  
Evidence to be Contained in the Record on Appeal filed  
with the Clerk on August 1, 1944:

116 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—9401 B) \* \*

**APPELLANTS' JOINT DESIGNATION OF THE  
PORTIONS OF THE RECORD, PROCEEDINGS  
AND EVIDENCE TO BE CONTAINED IN THE  
RECORD ON APPEAL.**

(Filed Aug. 1, 1944. Albert C. Sogemeier, Clerk.)

The following portions of the record, proceedings and evidence are hereby designated by the appellants, Jerome F. Duggan, Trustee of the estate of Christopher Engineering Company, a corporation, and Trustee of the estate of National Aircraft Corporation, a corporation, and National Aircraft Corporation, a corporation, as the portions of the record, proceedings and evidence to be contained in the record on their several appeals herein as follows:

1) The order of the United States District Court for the Southern District of Indiana, Indianapolis Division, of June 5, 1944.

2) The petition by National Aircraft Corporation for a review of the order of the Referee in Bankruptcy of May 3, 1944, which order approved a report filed by the Trustee concerning the sale of the assets of the bankrupt, which petition for review was filed in the office of the Referee in Bankruptcy.

3) Petition by Jerome F. Duggan, Trustee of the estate of Christopher Engineering Company, a corporation, and Trustee of the estate of National Aircraft Corporation, a corporation, pending in reorganization proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, for a review of the order of the Referee in Bankruptcy of May 3, 1944, which order approved a report filed by the Trustee concerning the  
117 sale of the assets of the bankrupt, which petition for review was filed in the office of the Referee in Bankruptcy.

4) Suggestion of Superseding Reorganization Proceedings and Motion to Stay Proceedings filed by Jerome F. Duggan, Trustee, in the United States District Court at Indianapolis, and exhibits attached thereto or filed there-

with, particularly those documents referred to in items No. 6 and No. 7 of this Designation.

5) Petition for Stay pending review by Judge filed by National Aircraft Corporation and by Jerome F. Duggan, Trustee, before the Referee in Bankruptcy.

6) The petition of the National Aircraft Corporation, subsidiary corporation's petition for reorganization, filed in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri on April 19, 1944, a certified copy whereof is attached to the Suggestion of Superseding Reorganization Proceedings and Motion to Stay Proceedings referred to in paragraph 4 above.

7) The order of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri approving the petition for reorganization of National Aircraft Corporation, subsidiary, made and entered on April 19, 1944, and the return of the U. S. Marshal at Indianapolis of April 20, 1944, showing service of said order on James C. Sansberry, Trustee, and Samuel L. Winternitz & Company, a certified copy whereof is attached to the Suggestion of Superseding Reorganization Proceedings and Motion to Stay Proceedings referred to in paragraph 4 above.

8) Telegram of May 11, 1944, addressed to Hon. Robert C. Baltzell, Judge of the U. S. District Court, Hon. Carl Wilde, Referee in Bankruptcy, and to James C. Sansberry, signed by Jerome F. Duggan, Trustee, and Noah Weinstein, Attorney for National Aircraft Corporation.

9) Order of Carl Wilde, Referee in Bankruptcy, of May 3, 1944.

10) Notice of Appeal to Circuit Court of Appeals filed by Jerome F. Duggan, Trustee.

11) Notice of Appeal to Circuit Court of Appeals, filed by National Aircraft Corporation.

118 12) Assignment of Errors filed by National Aircraft Corporation.

13) Assignment of Errors filed by Jerome F. Duggan, Trustee.

14) Statement of Points to be Relied Upon filed by National Aircraft Corporation.

15) Statement of Points to be Relied Upon filed by Jerome F. Duggan, Trustee.

16) This Designation.

17) Order or orders extending time for filing transcript and docketing appeal.

18) Certificate of District Clerk to transcript of record.

Appellants desire a transcript of the abovementioned portions of the Court proceedings and evidence for the Clerk of the United States Circuit Court of Appeals and elect that the record in this instance be printed under the supervision of said Clerk.

Jerome F. Duggan, Trustee of the Estate of  
Christopher Engineering Company, a corporation  
by

Jerome F. Duggan.

Jerome F. Duggan, Trustee of the Estate of  
National Aircraft Corporation, a corporation  
by

Jerome F. Duggan.

National Aircraft Corporation  
by

Philip B. O'Neill,  
Geo. O. Durhan.,  
Noah Weinstein,  
B. Sherman Landau.

Copies of the above Designation mailed, postage prepaid,  
this 31st day of July, 1944, to:

James C. Sansberry, Trustee  
938 Meridian Street  
Anderson, Indiana

Conrad S. Arnkens  
Attorney at Law  
Anderson, Indiana  
(Citizens Bank Bldg.)

Bamberger & Feibleman  
Attorneys at Law  
901 Security Trust Bldg.  
Indianapolis, Indiana.

Noah Weinstein.

119 The following is a copy of Appellee's Designation of the Portions of Records, Proceedings and Evidence to be Contained in the Record for Appeal filed with the Clerk on August 5, 1944:

120. IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—9401 B)

**APPELLEE'S DESIGNATION OF THE PORTIONS  
OF RECORDS, PROCEEDINGS AND EVIDENCE  
TO BE CONTAINED IN THE RECORD FOR  
APPEAL.**

(Filed Aug. 5, 1944. Albert C. Sogemeier, Clerk.)

The following portions of the records, proceedings and evidence are hereby designated by appellee, James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation, Bankrupt, as portions to be contained and included in the record of appeal of Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company, a corporation and Trustee of the Estate of National Aircraft Corporation, a corporation and National Aircraft Corporation, as follows:

1. The Certificate of Referee Carl Wilde on review, together with eleven items or exhibits submitted therewith and specified therein.

2. The order of Referee Carl Wilde, granting petitions for review, but denying the petition for stay filed by said appellants with said Referee.

3. This designation.

James C. Sansberry, Trustee in Bankruptcy  
of National Aircraft Corporation

By Bamberger & Feibleman,

By Isidore Feibleman,

Conrad S. Arnkens,

*Attorneys for said Trustee.*

Copies of the above Designation mailed, postage prepaid this 4th day of August, 1944, to:

Jerome F. Duggan, Wainwright Bldg.,

George O. Durham, 315 N. 7th St.,

Noah Weinstein, 705 Olive St.,

B. Sherman Landau, 705 Olive St.,

all of St. Louis, Missouri.

Pence, O'Neill & Diven, Anderson, Indiana,

*Appellant and Attorneys for Appellant.*



121 United States of America,  
Southern District of Indiana, }  
Indianapolis Division.

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the above and foregoing is a true and full transcript of the record and proceedings in the Matter of National Aircraft Corporation, Bankrupt, No. 9401 in Bankruptcy, according to the Appellants' joint designation filed August 1, 1944 and Appellee's designation filed August 5, 1944, now remaining among the records of said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Indianapolis, this 7th day of August, 1944.

Albert C. Sogemeier,

*Clerk, United States District Court  
Southern District of Indiana.*

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the twenty-eighth day of October, in:

In the Matter of

National Aircraft Corporation, a Corporation,  
Debtor.

Jerome F. Duggan, Trustee of the Estate of Christopher  
Engineering Company, a Corporation,  
*Appellant.*

*vs.*

No. 8655

James C. Sansberry, Trustee of the Estate of National  
Aircraft Corporation, a Corporation,  
*Appellee.*

National Aircraft Corporation, a Corporation,  
*Appellant.*

*vs.*

No. 8656.

James C. Sansberry, Trustee of the Estate of National  
Aircraft Corporation, a Corporation,  
*Appellee.*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 17th day of July, A. D. 1945.

(Signed) Kenneth J. Carrick,  
Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and forty-three and of our Independence, the one hundred and sixty-eighth.

In the Matter of  
National Aircraft Corporation,  
a Corporation,  
Debtor.

Jerome F. Duggan, Trustee of the  
Estate of Christopher Engineering  
Company, a Corp.,  
Appellant,

8655 vs.

James C. Sansberry, Trustee of the  
Estate of National Aircraft Corporation, a Corp.,  
Appellee.

National Aircraft Corporation,  
a Corp.,  
Appellant

8656 vs.

James C. Sansberry, Trustee of the  
Estate of National Aircraft Corporation, a Corp.,  
Appellee.

Appeals from the  
District Court of  
the United States  
for the Southern  
District of Indiana,  
Indianapolis Division.

7

And, to-wit: On the tenth day of August, 1944, there was filed in the office of the Clerk of this Court, an Appearance of counsel for Appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Cause No. 8655.

Jerome F. Duggan, Trustee of Christopher Engineering Company, a corporation, and Trustee of National Aircraft Corporation, a corporation,

*Appellant,*

*vs.*

James C. Sansberry, Trustee of the Estate of National Aircraft Corporation, a corporation, Bankrupt.

The Clerk will enter our appearance as counsel for appellants.

Geo. O. Durham,  
315 N. Seventh St.,  
St. Louis 1, Mo.

Jerome F. Duggan,  
Wainwright Bldg.,  
St. Louis, Mo.

Noah Weinstein,  
705 Olive St.,  
St. Louis, Mo.

All notices may be mailed to Noah Weinstein, 705 Olive Street, St. Louis 1, Missouri, in order to avoid service of multiple copies on all counsel for appellants.

Endorsed: Filed August 10, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the tenth day of August, 1944, there was filed in the office of the Clerk of this Court, an Appearance of counsel for Appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8656.

National Aircraft Corporation, a corporation,  
*Appellant.*  
*vs.*

James C. Sansberry, Trustee of the Estate of National Aircraft Corporation, a corporation, Bankrupt,  
*Appellee.*

The Clerk will enter our appearance as counsel for appellants.

Geo. O. Durham,  
315 N. Seventh St.,  
St. Louis 1, Mo.

Noah Weinstein,  
705 Olive St.,  
St. Louis, Mo.

Philip B. O'Neill,  
Anderson, Indiana.

All notices may be mailed to Noah Weinstein, 705 Olive Street, St. Louis 1, Missouri, in order to avoid service of multiple copies on all counsel for appellants.

Endorsed: Filed August 10, 1944. Kenneth J. Carrick,  
Clerk.

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And on the same day, to-wit: On the tenth day of August, 1944, there was filed in the office of the Clerk of this Court, an Appearance of counsel for Appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8655.

Jerome F. Duggan, Trustee of Christopher Engineering Company, a corporation, and Jerome F. Duggan, Trustee of National Aircraft Corporation, a corporation,  
*Appellants,*

*vs.*

James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation, Bankrupt,  
*Appellee.*

The Clerk will enter our appearance as counsel for Appellee.

Ralph Bamberger,  
Isidore Feibleman,  
902 Security Trust Building,  
Indianapolis 4, Indiana.

Julian Bamberger,  
Charles B. Feibleman,  
902 Security Trust Building,  
Indianapolis 4, Indiana.

Conrad S. Arnkens,  
Citizens Bank Building,  
Anderson, Indiana.

Endorsed: Filed August 10, 1944. Kenneth J. Carrick,  
Clerk.



And on the same day, to-wit: On the tenth day of August, 1944, there was filed in the office of the Clerk of this Court, an Appearance of counsel for Appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8656.

National Aircraft Corporation, a corporation,  
*Appellant,*  
*vs.*

James C. Sansberry, Trustee in Bankruptcy of National  
Aircraft Corporation, Bankrupt,  
*Appellee.*

The Clerk will enter our appearance as counsel for Appellee.

Ralph Bamberger,  
Isidore Feibleman,  
902 Security Trust Building,  
Indianapolis 4, Indiana.

Julian Bamberger,  
Charles B. Feibleman,  
902 Security Trust Building,  
Indianapolis 4, Indiana.

Conrad S. Arnkens,  
Citizens Bank Building,  
Anderson, Indiana.

Endorsed: Filed August 10, 1944. Kenneth J. Carrick,  
Clerk.

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And afterwards, to-wit: On the sixth day of February, 1945, the following further proceedings were had and entered of record, to-wit:

Tuesday, February 6, 1945.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.  
Hon. J. Earl Major, Circuit Judge.  
Hon. Charles G. Briggles, District Judge.

In the Matter of  
National Aircraft Corporation,  
Debtor.

Jerome F. Duggan, Trustee, etc.,  
Appellant.  
8655 vs.

James C. Sansberry, Trustee, etc.,  
Appellee.

National Aircraft Corporation,  
Appellant.  
8656 vs.

James C. Sansberry, Trustee, etc.,  
Appellee.

Appeals from the  
District Court of  
the United States  
for the Southern  
District of Indiana,  
Indianapolis Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. George O. Durham, counsel for appellants, and by Mr. Isidore Feibleman, counsel for appellee, and the Court takes this matter under advisement.

And afterwards, to-wit: On the twenty-first day of April, 1945, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

OCTOBER TERM, 1944, APRIL SESSION, 1945.

In the Matter of  
NATIONAL AIRCRAFT CORPORATION,  
A Corporation,  
Debtor.

JEROME F. DUGGAN, Trustee of the  
Estate of Christopher Engineer-  
ing Company, A Corporation,  
*Appellant*,  
No. 8655 vs.

JAMES C. SANSBERRY, Trustee of the  
Estate of National Aircraft Cor-  
poration, A Corporation,  
*Appellee*.

NATIONAL AIRCRAFT CORPORATION,  
A Corporation,  
*Appellant*,  
No. 8656 vs.

JAMES C. SANSBERRY, Trustee of the  
Estate of National Aircraft Cor-  
poration, A Corporation,  
*Appellee*.

Appeals from the  
District Court of  
the United States  
for the Southern  
District of Indiana,  
Indianapolis Divi-  
sion.

April 21, 1945.

Before SPARKS and MAJOR, *Circuit Judges*, and BRIGGLE,  
*District Judge*.

SPARKS, *Circuit Judge*. This appeal is from an order of  
the District Court of the Southern District of Indiana en-  
tered on June 5, 1944. That order denied separate peti-

tions for review of a previous order, purporting to be presented by National Aircraft Corporation of Indiana, hereafter referred to as National, whose principal place of business and all of its assets are located in that State, and by James F. Duggan, Trustee of the estate of Christopher Engineering Company of Missouri, hereafter referred to as Christopher, whose principal place of business is St. Louis. The order sought to be reviewed was entered May 3, 1944, and confirmed a sale of National's major assets by Sansberry, its trustee in bankruptcy.

The issue here presented involves a clash of jurisdiction between the district courts of Southern Indiana, and the Eastern Division of the Eastern District of Missouri.

The principal question for our decision is whether the District Court of Missouri had jurisdiction on April 19, 1944, to decree as it did, "That the National Aircraft Corporation is a wholly owned subsidiary of the Christopher Engineering Company . . . the principal debtor herein, and is entitled to file its petition in these proceedings of the parent company," and to order appellee, the trustee appointed by the Indiana Court, to turn over all assets of National to a trustee appointed by itself. That question is to be decided from the following undisputed facts.

On December 27, 1943, Christopher filed its petition, in the District Court of Missouri, for reorganization under Chapter X of the Bankruptcy Act. The petition was approved by that court and Duggan was appointed trustee. The resolution relied upon as authority for filing such petition did not purport to be an act of that corporation. It was signed only by A. B. Christopher, President, and J. M. Brown, Vice-President, and the name of the Company nowhere appears with the other signatures. They therein described themselves as owning a majority of the shares of stock of the Christopher Company and as constituting a majority of its board of directors. They further described Joe Dubman as the minority of the Board of Directors, who, on account of his hostility to the majority of the Board, had instituted a suit in the Missouri State Court for the appointment of a receiver for that Company. Under those conditions they said it was impossible to hold a formal meeting of the directors or stockholders, and they therefore ordered themselves, or either one, as President or Vice-President respectively, of the Christopher Company,

to file that Company's petition for reorganization. The petition was signed by the debtor by A. B. Christopher, President, and verified by his oath.

On January 21, 1944, an involuntary petition in bankruptcy was filed against National in the District Court of Indiana, by certain of its creditors. On February 8, 1944, in that proceeding, National was adjudicated a bankrupt, an order of reference was made, and Sansberry was appointed receiver. On March 7, 1944, Sansberry was elected trustee by the creditors, took possession of the assets, and on March 21, 1944, he filed a petition before the Indiana referee to sell them. On April 6, 1944, the referee ordered the trustee to sell those assets on April 20, 1944.

J. M. Brown, a stockholder and director of Christopher, was also secretary of National when it was adjudicated a bankrupt. On April 19, 1944, he caused an intervening petition to be filed on behalf of National in Christopher's reorganization proceedings in Missouri, thereby seeking reorganization of National as a subsidiary of Christopher. That petition was signed "National Aircraft Corporation, a corporation, By J. M. Brown, Petitioner." It was verified by Brown's oath, which stated that he was Secretary of National, and that he was duly authorized to make the petition and affidavit in National's behalf. There was no showing as to how or by whom he was thus authorized. Moreover, the petition disclosed to that court that National had been adjudicated a bankrupt by the District Court in Indiana; that Sansberry had been appointed trustee, had taken possession of all the assets of National, and by order of that court had advertised a sale of such assets, beginning the next day at the debtor's place of business in Indiana, and that unless restrained by the District Court of Missouri, the sale would proceed as advertised. On the same day the District Court of Missouri found, "That the National Aircraft Corporation is a wholly owned subsidiary of the Christopher Engineering Company . . . the principal debtor herein, and is entitled to file its petition in these proceedings of its parent company." Thereupon the injunction issued on April 19, and was served upon Sansberry, Trustee, and his auctioneer the next morning at 9:30, the time scheduled for the sale to begin. The sale proceeded as advertised, a report thereof was made by the trustee to the referee on April 21, and it was approved by that referee on May 3, 1944.

On May 10, 1944, James F. Duggan as Trustee of the estate of Christopher, and Trustee of the estate of National (by virtue of the appointments of the District Court in Missouri) filed a petition in the District Court in Indiana to stay further proceedings in that court, and to set aside all orders made by it with respect to National on or after April 19, 1944. That court, as requested, reviewed such orders and confirmed the sale on June 5, 1944. Duggan, as Trustee of both debtors, gave notice of appeal.

It is conceded by appellants that the District Court in Indiana had jurisdiction of National and its assets prior to April 19, 1944. However, they contend that by virtue of section 129 of Chapter X of the Bankruptcy Act, 11 U. S. C. A. § 529, the jurisdiction in the Indiana Court terminated and became lodged in the District Court in Missouri, by reason of the latter's order on that date with respect to National's alleged petition for reorganization. Before there could be jurisdiction in the latter court, we think it must have been established that National was a subsidiary of Christopher, not only on April 19, 1944, but on December 27, 1943, when Christopher filed its petition for reorganization, and also on January 21, 1944, when the involuntary petition in bankruptcy against National was filed in Indiana. Unless it had such a status at the earlier dates, the fact that it became a subsidiary at the later date was insufficient under the applicable provisions of the Bankruptcy Act to confer jurisdiction upon the Missouri Court. These were jurisdictional facts, which of necessity must have been proved before the court in Missouri could possibly obtain jurisdiction of National, or oust the jurisdiction of the District Court in Indiana, and the burden was upon petitioners to establish those facts. This they did not do.

Appellants contend that National was a subsidiary of Christopher because the latter owned all of the former's capital stock having the power to vote for the election of directors. It is not denied that Christopher, or its trustee, received all such stock, if any, in its possession on April 19, 1944, from A. B. Christopher and J. M. Brown, who, prior to that time, held the majority stock in each corporation.

It is significant that the order of the court in Missouri does not state that Christopher owned any stock of National prior to April 19, 1944. Certainly Christopher, after



its petition for reorganization had been approved and a trustee appointed for its estate, would not be permitted to purchase stock of another corporation without that court's permission, even for the purpose of acquiring a subsidiary. No such order appears to have been made. It would also seem passing strange, after National had been adjudicated a bankrupt, to permit its majority stockholders to transfer their stock to another corporation in order to effectively create a subsidiary for the purpose of taking a change of venue on the alleged subsidiary's petition for reorganization, and that too when its assets had been advertised for sale without any suggestion whatever to either the court or the debtor's trustee in Indiana that it desired a reorganization.

On first thought it might seem a captious interpretation of the Missouri court's order to limit the beginning of the subsidiary relationship to April 19, 1944. However, that is the date selected by that court and we must presume that there was no evidence before it that the relationship existed earlier. If there is any doubt that the court meant what it said in that order, we call attention to further facts before us which seem to fully confirm our interpretation of it. We do not discuss the facts about to be related for the purpose of showing that the court in Missouri erred in deciding the merits of the petition, but rather for the purpose of showing that it was without jurisdiction to enter such order. Of course, if it had jurisdiction, it had the right to decide the merits regardless of whether that decision was right or wrong.

Christopher's petition for reorganization states among other matters that "The financial condition of your petitioner is fully set forth in the balance sheet as of September 30, 1943 \* \* \* annexed hereto and made a part hereof." This was Christopher's last balance sheet and it makes no mention of the debtor's ownership or control of any stock in the National Company, although it purports to set forth a complete list of its assets and liabilities.

On February 25, 1944, J. M. Brown filed his petition under oath with the District Court of Missouri in the proceedings for the reorganization of Christopher. That petition alleged that Brown was the owner of 288½ shares of no par value stock of National; that on or about the eighteenth day of January, 1944, Duggan, Trustee of Christopher, filed his petition for an order directing Brown and A. B.

Christopher to forthwith endorse, deliver and surrender to Duggan, Trustee, all of their stockholdings and stock certificates in National; that thereupon that court entered an order directing him to endorse, deliver and surrender his stockholdings to Duggan, Trustee, the order further providing that the delivery of the stock, pursuant to the order, should not in any way affect Brown's claim thereto. The petition further alleged that at the time of the entry of that order, Brown was not in the possession of his stock above referred to, for the reason that he had on or about November 29, 1943, endorsed and delivered his said stock to B. Sherman Landau as collateral security for a loan of \$6,000 made by Landau to Brown. It was further alleged that Landau complied with the above order and turned over and delivered the shares to Duggan, Trustee. The petition further stated that Brown was the absolute owner of the shares delivered by Landau, subject to the lien of Landau, and that Brown was entitled to immediate possession of them subject to Landau's lien. The petition prayed that the court enter its order finding that Brown was the sole owner of said shares of stock, subject only to Landau's lien, and that he was entitled to the possession of them, subject to that lien, and that Duggan, Trustee, be directed to forthwith deliver them to Brown, subject to that lien.

B. Sherman Landau was attorney for J. M. Brown when the latter filed National's petition for reorganization in Missouri. He also filed a separate petition before the District Court in Missouri on February 25, 1944, in which he stated substantially the same facts as set forth in Brown's petition just mentioned.

On the same date A. B. Christopher also filed his petition in the same court and proceedings, alleging his ownership of 288½ shares of National's stock, which petition was substantially identical with Brown's petition, with the exception that his stock had not been pledged to anyone as security. It asked for a return of the stock to himself.

It is significant that the affidavits of Brown and A. B. Christopher state that the trustee's petition for this order of transfer of stock was filed with the District Court in Missouri, and the order was entered on the very uncertain date of "on or about January 18, 1944." We are not informed as to whether the true date was before, on, or after January 21, the date when the creditors of National filed

their involuntary petition in bankruptcy. However, the order specifically provided that the delivery and surrender of such stock, endorsed by its then owners, would not in any way affect the endorser's claims thereto. The record is silent as to when the stock was endorsed and delivered to Duggan, Trustee, by either Brown, Landau or A. B. Christopher.

Furthermore, at the first meeting of National's creditors, on March 7, 1944, Brown was present and testified under oath. He said that National was originally organized with local capital at Elwood, Indiana, and that in December, 1942, he and A. B. Christopher purchased all of its capital stock; that while the certificates were turned over to Duggan, Trustee of A. B. Christopher in a reorganization proceeding in St. Louis, there was no reason that he knew why such capital should be considered as the property of Christopher Company instead of himself and A. B. Christopher individually. When asked whether National was insolvent at that time, in the sense that the aggregate of its liabilities was in excess of its assets, he answered "It looks to me like it is insolvent, but I would not care to express myself." He then said that his stock in National was then in his name, and not in the name of Christopher Engineering Company, but that he had pledged it to Landau to secure a debt, putting up the stock as collateral. He made no objection to the appointment of a trustee for National.

Under these facts we are convinced that the District Court in Missouri, by its order of April 19, 1944, intended to limit the beginning of the subsidiary relation of National to that date, presumably when the stock was actually endorsed and delivered to Duggan, Trustee.

As we construe the Bankruptcy Act, after a debtor has been adjudged a bankrupt or its petition for reorganization has been approved, and its property has been turned over to a trustee, its activities with respect to its property are extremely limited. We know of nothing it can do without permission of the court which has rightfully assumed jurisdiction. It is contended by appellants, however, that under section 529, after it has been adjudicated a bankrupt and its property transferred to a trustee, it may file a petition for reorganization in any district court where its parent corporation resides. We are convinced that this is not a proper interpretation of section 529.

Sub-Chapter IV of Chapter X deals with the petition for reorganization, including the right to file and the venue. 11 U. S. C. A. sections 526-529. They should be construed together.<sup>1</sup>

Section 526 merely provides that a corporate debtor or its creditors may file a petition for reorganization of such debtor, providing there is no pending petition for reorganization of the same debtor.

Section 527 provides that *if there is a bankruptcy proceeding pending* against the debtor corporation, and we take this to mean an insolvent debtor against or by whom no petition for reorganization has yet been filed, then and in that event such a petition may be filed in that proceeding, either before or after adjudication.

Section 528 provides that *if no bankruptcy proceeding is pending* against the debtor corporation, and we construe this is to refer to *any* bankruptcy proceeding, then and in that event an *original* petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months.

If a corporation be a subsidiary, as provided in section 529, an *original* petition for reorganization may be filed by or against the debtor corporation as provided in section 528, or in the court which has approved the parent company's petition for reorganization.

It will be noted that section 528 deals only with estates

1. Section 526. Filing petition: persons entitled.

A corporation, or three or more creditors \* \* (having claims aggregating \$5000 or more, liquidated as to amount and not contingent as to liability) \* \* \* may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter.

Section 527. Same: pending bankruptcy proceeding.

A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication of a corporation.

Section 528. Same: original petition.

If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction.

Section 529. Same: subsidiary corporation.

If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 528 of this title or in the court which has approved the petition by or against its parent corporation.

where no bankruptcy proceeding of any kind is pending. In that event an *original* petition is permitted to be filed by the debtor or by its creditors. We interpret this to mean that the petition should be an original one, in the sense that no other petition in bankruptcy is pending in any jurisdiction with respect to the debtor's estate. No other interpretation has been suggested. Section 529 contains the same word presumably with the same intended meaning, otherwise the sentence would express an absurdity, because section 528 deals only with estates where no bankruptcy proceeding is pending with respect to such estate. Appellants contend that National was authorized and chose to file its alleged petition under section 529 rather than section 528. However, it is clear there was no authority to choose nor was a choice of jurisdiction made, for National could not then have filed under section 528, because there was then pending in Indiana an involuntary proceeding in bankruptcy against it; and for the further reason that its alleged petition for reorganization in Missouri was not an *original* one as required by both sections 528 and 529.

The cited sections of the statute seem to fully cover every conceivable contingency pertaining to the venue of a petition for reorganization of a corporation, and we think our interpretation of them gives full force to each phrase and clause thereof. It is apparent that appellants' interpretation does not do this. True, section 529 does not contain the words found in section 528—"If no bankruptcy proceeding is pending." However, we think the substance of this limitation is contained in section 529, by the requirement that the petition shall be an original one. Such construction gives full effect to every word of the Act, and expresses what we consider the clear intention of Congress.

Moreover, section 529 was not available to either the alleged parent company or its stockholders, or to the stockholders of National, although they seem to have actuated these issues. It was available only to National, because it was the alleged petitioner. National's name, of course, appears as a signature to the petition, but it was placed there by Brown, not as a director, nor as a stockholder, nor as any other officer of National, but as "Petitioner." In that petition he does not claim to be a stockholder, nor an agent authorized by National, nor by the District Court of Southern Indiana, to sign or file it. True, in the jurat of the

petition he says he is Secretary of National, but he nowhere states or claims that he had authority to file the petition by reason of that fact. Moreover, at the time the District Court in Missouri sought to assume jurisdiction of the petition, and oust the District Court of Indiana of its jurisdiction, and enjoined its referee and other officers from further proceedings in this matter, there were pending in the court in Missouri, the claims under oath of Brown, and A. B. Christopher, asserting sole ownership and the right to possession of the 577 shares of National's stock, which had been endorsed and delivered to Duggan, Trustee in Missouri, with the understanding that such endorsement and delivery would not in any way affect the endorser's claims thereto. It is not here denied that this is the alleged transfer of stock upon which appellants rely to establish the subsidiary relationship of National. It seems to us that one of two things is true, and in either case the court in Missouri had no authority to assume jurisdiction of National. If Christopher did not become the rightful owner of this stock by such transfer, then National did not become its subsidiary, and was not authorized to file its alleged petition. On the other hand, if this stock was in good faith actually endorsed and delivered and the ownership transferred to Duggan, Trustee, then Brown had no authority, disclosed by this evidence, to file National's petition for reorganization.

Under the facts presented by this record, we are convinced that appellee, an officer appointed by the District Court of Indiana and acting under its orders; had no reason to disregard those orders and obey the orders of the Missouri court which acted without statutory authority in entering such orders.

The order is

**AFFIRMED.**

MAJOR, *Circuit Judge*, concurring. I concur in the view that the order appealed from should be affirmed. As pointed out by Judge Sparks, the District Court of Indiana properly acquired jurisdiction of National and concededly retained such jurisdiction until April 19, 1944. If the Indiana court lost jurisdiction at that or any subsequent time, it was because of the alleged filing by National of its petition for reorganization in the St. Louis court under Sec. 529, relating to a subsidiary corporation. The burden rested upon appellant to show that National was a subsidiary of Christopher on December 27, 1943,



when Christopher filed its petition for reorganization in that court. Appellant failed to carry the burden in this respect. The most that the finding of the St. Louis court discloses is that National was a subsidiary on April 19, 1944. For aught that the record of that court discloses, National might have become a subsidiary just prior to the entry of that order. A showing based upon such a finding did not deprive the Indiana court of jurisdiction; in fact, it had no right to relinquish jurisdiction. It therefore appears to me as being unnecessary to decide whether the Indiana court would have lost jurisdiction had there been a showing that National was a subsidiary of Christopher at the time the latter's petition for reorganization was filed in the St. Louis court.

BRIGGLE, *District Judge*, dissenting. The question for decision here is of much broader import than the mere determination of the propriety of the sale of assets of a bankrupt and involves, as the opinion of the Court states, a question of conflicting jurisdiction between two District Courts. The opinion holds that the Missouri Court was without jurisdiction, under the facts disclosed, to receive National Aircraft Corporation on April 19, 1944, for reorganization in the proceedings then pending in the Missouri Court for reorganization of the Christopher Engineering Company, alleged to be the parent company. This conclusion seems to be bottomed upon two principal bases:—1. That National failed to establish in the Missouri Court that it was a subsidiary of Christopher within the meaning of the bankruptcy act, and, 2. That in any event National being involved in liquidation proceedings in the Indiana Court is without legal authority to petition for reorganization in the Missouri Court. I cannot subscribe to either proposition.

*First.* Whether National was a subsidiary of Christopher is a fact question never an issue in the Indiana Court, but a question properly before the Missouri Court. Stock ownership in National never became important in the liquidation proceedings in Indiana, as it early became obvious that upon liquidation there would be insufficient assets to pay creditors. Upon the filing of National's petition in Missouri, however, the question of stock ownership immediately became an issue. I, therefore, look no further on this question than the findings and order of the Missouri Court. On National's petition for intervention



and reorganization that Court found: "That the National Aircraft Corporation is a wholly owned subsidiary of the Christopher Engineering Company, a corporation, the principal debtor herein, and is entitled to file its petition in these proceedings of its parent company. . . . That said petition of National Aircraft Corporation complies with the requirements of Chapter Ten of the Bankruptcy Act. That said petition . . . has been filed in good faith." Upon these and other findings the Missouri Court proceeded to approve the petition, entered upon the process of reorganization, and among other things enjoined the sale of National's assets in Indiana. The record does not disclose upon what evidence the Missouri Court acted and with that I think we are not concerned. The findings are sufficiently broad to support the Court's conclusion of law that National had complied with the Act. The opinion is pregnant with a recital of facts reflecting upon the integrity of the findings of the Missouri Court, all of which I respectfully submit are irrelevant in the consideration of the questions before us. If the Missouri Court acted improvidently or reached erroneous conclusions of fact or law that was a matter to be challenged by direct appeal and not a matter for collateral consideration by the Indiana Court or by this Court. It is my judgment that we must give full faith to the findings and order of the Missouri Court.

*Second.* The framers of the 1938 revision of the Bankruptcy Act (commonly called the Chandler Act) had many objectives, not least of which was the reconstruction of failing businesses and avoidance of the drastic deflationary effect of liquidation upon the public economy as a whole. It cannot be denied but that it was the intention to lay the framework for rehabilitation where possible rather than liquidation. See commentary on Chandler Act, 11 U. S. C. A., *ante* 201. With this in mind it is pertinent to note certain sections of Chapter 10 dealing with corporate reorganizations. Section 126 of the Act (11 U. S. C. A. 526) provides for the filing of a petition for reorganization by the corporation (or creditors under some circumstances) where no other petition by or against such corporation is pending under Chapter 10. It is to be noted that a "petition" means a petition under Chapter 10. See Section 106 (9) (11 U. S. C. A. 506). Section 127 of the Act (11 U. S. C. A. 527) then provides that a petition may be filed in a pending bankruptcy proceeding

either before or after adjudication. The pending proceedings of course refers to proceedings under the liquidation provisions and not the reorganization provisions. Section 128 (11 U. S. C. A. 528) provides for the filing of an *original* petition for reorganization where no bankruptcy proceedings are pending, in the territorial jurisdiction of a court where the corporation has had its principal place of business or principal assets for the major part of the preceding six months. Section 129 (11 U. S. C. A. 529) provides that if a corporation be a subsidiary an original petition may be filed by or against it as provided in Section 128 or *in the Court which has approved the petition by or against its parent corporation.*

Assuming that National was in fact a subsidiary of Christopher as the Missouri Court has found, we find that the facts of our case fit perfectly into the legislative scheme as exemplified in the Chandler Act. The Missouri Court had in December, 1943, taken jurisdiction of Christopher, the parent corporation, for reorganization. National, the subsidiary, on April 19, 1944, under Section 129, intervened and asked for reorganization with its parent. That certain creditors of National had in January, 1944, invoked the jurisdiction of the Indiana Court for liquidation of National is of no moment—indeed the Act expressly contemplates that reorganization proceedings may be invoked in behalf of a corporation already in bankruptcy and following adjudication. This right seems to be unconditional and not limited as to time. The reorganization proceedings could, under Section 127 have been had in the Indiana Court; they could, under Section 129, have been had in either the Indiana Court or the Missouri Court. National, being under no compulsion or restraint in this respect, elected to file in Missouri. The Missouri Court, upon assuming jurisdiction of National, was bound, if reorganization of National was to be more than a mere gesture, to take immediate steps to preserve its assets. The usual concepts of *comity* between courts have no application to such a situation; neither can it be said that concurrent jurisdiction exists under such circumstances between the liquidating court and the reorganization court, inviting application of General Order 6 (11 U. S. C. A. foll. 53). Neither does Section 32 of the Act (11 U. S. C. A. 55) dealing with instances where petitions have been filed in two different courts, have any application under the facts here. We are concerned here with but one liqui-

ation proceeding and one reorganization proceeding. The former in Indiana, the latter in Missouri.

The spirit and purpose of the reorganization provisions of the Act would be thwarted if the Indiana Court were to be permitted to review the findings of the Missouri Court—and this follows even though, as here, the Indiana Court had jurisdiction of National under the general bankruptcy section of the Act and was proceeding in good faith in its liquidation. Ordinary bankruptcy contemplates sale of assets and liquidation for the benefit of creditors, while the reorganization provisions of Chapter 10 head in directly the opposite direction and contemplate preservation of assets, even to the extent of returning them to the debtor under some circumstances. Congress was diligent in its undertaking to give the reorganization Court a free hand. Section 111 of the Act (11 U. S. C. A. 511) provides for exclusive jurisdiction; Section 113 (11 U. S. C. A. 513) clothes the reorganization court with power to stay all other proceedings concerning debtor; Section 148 (11 U. S. C. A. 548) makes the order approving the petition an automatic stay of other proceedings, including a pending bankruptcy and Section 149 (11 U. S. C. A. 549) provides that when such order shall become final it shall constitute a conclusive determination of jurisdiction. See *Re Park Beach Hotel*, 96 Fed. (2) 886 (77B), *Re Maier Brewing Co.*, 38 Fed. Supp. 806.

The wisdom of permitting a subsidiary corporation, whose principal place of business and assets are located in Indiana, to intervene in the court having jurisdiction for reorganization of its parent company is not before us; that has, as I think, been clearly determined by Congress. The challenge that the petition of the subsidiary may have been conceived in iniquity and founded upon fraud is, likewise, not before us. We are not reviewing the findings of the Missouri court which has found to the contrary and which has, by its orders, sought to gain control of the assets of the subsidiary. We are only called upon to review the propriety of an order approving the sale of assets of the subsidiary in Indiana, where such sale had been enjoined by the Missouri court. Under such circumstances I think our duty is not in doubt. The jurisdiction of the Missouri court for purposes of reorganization is paramount and cannot here be challenged. Indiana must, in my judgment, yield to Missouri.

Endorsed: Filed April 21, 1945. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-first day of April, 1945, the following further proceedings were had and entered of record, to-wit:

Saturday, April 21, 1945.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.  
Hon. J. Earl Major, Circuit Judge.  
Hon. Charles G. Briggles, District Judge.

In the Matter of

National Aircraft Corporation,  
Debtor.

Jerome F. Duggan, Trustee, Estate  
of Christopher Engineering Co.,  
*Appellant,*

8655

vs.

James C. Sansberry, Trustee, Es-  
tate of National Aircraft Corp.,  
*Appellee.*

Appeal from the Dis-  
trict Court of the  
United States for  
the Southern Dis-  
trict of Indiana,  
Indianapolis Divi-  
sion.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

In the Matter of  
National Aircraft Corporation,  
Debtor.

National Aircraft Corporation,  
*Appellant,*  
8656                      *vs.*

James C. Sansberry, Trustee, Es-  
tate of National Aircraft Corpo-  
ration,  
*Appellee.*

} Appeal from the Dis-  
trict Court of the  
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trict of Indiana,  
Indianapolis Divi-  
sion.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

And afterwards, to-wit: On the seventh day of May, 1945, there was filed in the office of the Clerk of this Court, a Petition for Rehearing, which said petition is not copied herein.

And afterwards, to-wit: On the twenty-eighth day of May, 1945, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said answer is not copied herein.

And afterwards, to-wit: On the eleventh day of June, 1945, the following further proceedings were had and entered of record, to-wit:

Monday, June 11, 1945.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Charles G. Briggie, District Judge.

In the Matter of  
National Aircraft Corporation,  
Debtor.

Jerome F. Duggan, Trustee, etc.,  
Appellant  
8655 vs.

James C. Sansberry, Trustee, etc.,  
Appellee.

National Aircraft Corporation,  
Appellant  
8656 vs.

James C. Sansberry, Trustee, etc.,  
Appellee.

Appeals from the  
District Court of  
the United States  
for the Southern  
District of Indiana,  
Indianapolis Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied, Briggie, D. J., dissenting.

And afterwards, to-wit: On the twenty-second day of June, 1945, there was filed in the office of the Clerk of this Court, a Petition for Stay of Mandate, which said petition is in the words and figures following, to-wit:



IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of:

National Aircraft Corporation,  
a corporation,

Debtor,

Jerome F. Duggan, Trustee of the  
Estates of Christopher Engi-  
neering Company, a corpora-  
tion, and National Aircraft Cor-  
poration, a corporation,*Appellant.*

No. 8655.

*vs.*James C. Sansberry, Trustee of  
the Estate of National Aircraft  
Corporation, a corporation,*Appellee.*National Aircraft Corporation,  
a corporation,*Appellant.*

No. 8656.

*vs.*James C. Sansberry, Trustee of  
the Estate of National Aircraft  
Corporation, a corporation,*Appellee.*Appeals from the  
District Court of  
the United States  
for the Southern  
District of Indi-  
ana, Indianapolis  
Division, Honora-  
ble Robert C. Balt-  
zell, Judge.PETITION OF APPELLANTS FOR STAY OF  
MANDATE.

To the Honorable Judges of Said Court:

Jerome F. Duggan, George O. Durham and Noah Wein-  
stein respectfully show to the Court:(1) That they are attorneys for the appellants in the  
above-entitled cause.



(2) That appellants intend to apply to the Supreme Court of the United States for certiorari to review the judgment of this Honorable Court heretofore entered in the above cause.

Wherefore, your petitioners respectfully pray that this Court stay its mandate pending such application.

Jerome F. Duggan,  
George O. Durham,  
Noah Weinstein.

State of Missouri, }  
City of St. Louis. } ss.

Noah Weinstein, being duly sworn on his oath, states that he is one of the petitioners in the foregoing petition, that he has read the same and that the facts therein set forth are true, that he has served this petition upon opposing counsel by mailing copies of same to attorneys for the appellee at Indianapolis and Anderson, Indiana.

(Seal)

Noah Weinstein.

Subscribed and sworn to before me this 21st day of June, 1945.

B. Sherman Landau,  
*Notary Public.*

My commission expires July 28, 1947.

Endorsed: Filed June 22, 1945. Kenneth J. Carrick,  
Clerk.

---

And on the same day, to-wit: On the twenty-second day of June, 1945, the following further proceedings here had and entered of record, to-wit:

Friday, June 22, 1945.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of

National Aircraft Corporation,  
Debtor.

Jerome F. Duggan, Trustee, etc.,  
*Appellant*,

8655                      *vs.*

James C. Sansberry, Trustee, etc.,  
*Appellee*.

National Aircraft Corporation,  
*Appellant*

8656                      *vs.*

James C. Sansberry, Trustee, etc.,  
*Appellee*.

Appeals from the  
District Court of  
the United States  
for the Southern  
District of Indiana,  
Indianapolis Division.

On motion of counsel for appellants, it is ordered that the issuance of the mandate of this Court in these causes be, and the same is hereby, stayed pursuant to Rule 25 of the Rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of proceedings had and papers filed, excepting briefs of counsel and motions and orders relative to filing record and briefs, in:

In the Matter of

National Aircraft Corporation, a Corporation,  
Debtor.

Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company, a Corporation,  
*Appellant,*

*vs.*

No. 8655.

James C. Sansberry, Trustee of the Estate of National Aircraft Corporation, a Corporation,  
*Appellee.*

National Aircraft Corporation, a Corporation,  
*Appellant,*

*vs.*

No. 8656.

James C. Sansberry, Trustee of the Estate of National Aircraft Corporation, a Corporation,  
*Appellee.*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 17th day of July, A. D. 1945.

(Seal) (Signed) Kenneth J. Carrick,  
Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.

## SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 418

ORDER ALLOWING CERTIORARI—Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

## SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 419

ORDER ALLOWING CERTIORARI—Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

FILE COPY

Office - Supreme Court, U. S.

FILED

SEP 10 1945

CHARLES ELMORE DROPLEY

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1944

No. 418 - 419

IN THE MATTER OF: NATIONAL AIRCRAFT CORPORATION,  
A CORPORATION, DEBTOR.

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES OF CHRISTOPHER ENGINEERING COMPANY, A CORPORATION, AND  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,

*Petitioner,*

*vs.*

JAMES C. SANBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,

*Respondent.*

NATIONAL AIRCRAFT CORPORATION, A CORPORATION,

*Petitioner,*

*vs.*

JAMES C. SANBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,

*Respondent.*

Petition for Writ of Certiorari

TO THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

GEO. O. DURHAM,  
315 N. 7th Street, St. Louis 1, Mo.,

NOAH WEINSTEIN,  
705 Olive Street, St. Louis 1, Mo.,  
*of Counsel.*

LUKE E. HART,  
509 Olive Street, St. Louis 1, Mo.,  
*Attorney for Petitioners.*

JEROME F. DUGGAN, *pro se.*

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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1944

No.

IN THE MATTER OF: NATIONAL AIRCRAFT CORPORATION,  
A CORPORATION, DEBTOR.

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES OF CHRISTOPHER ENGINEERING COMPANY, A CORPORATION, AND  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Petitioner,*  
vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Respondent.*

NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Petitioner,*  
vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF  
NATIONAL AIRCRAFT CORPORATION, A CORPORATION,  
*Respondent.*

Petition for Writ of Certiorari

TO THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Jerome F. Duggan, as trustee in reorganization for National Aircraft Corporation, a subsidiary debtor, by appointment of the United States Court of Bankruptcy for the Eastern Division of the Eastern District of Mis-

souri, a reorganization court, under Chapter X of the Chandler Act (R. 62), with the consent and at the direction of said Court (Appendix) and National Aircraft Corporation, subsidiary debtor, by adjudication of the same Court (R. 61), respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit (R. 105) rendered on two separate appeals in which these petitioners were appellants and James C. Sansberry, trustee in bankruptcy, was respondent.

The appeals were tried together on a single record, and determined by a single judgment (R. 105).

The judgment affirmed the power of the Bankruptcy Court for the Southern District of Indiana and its trustee to sell the assets of petitioner, National Aircraft Corporation, in a proceeding under Chapters I to VII of the Chandler Act (R. 3) after the Bankruptcy Court for the Eastern District of Missouri had received and approved (R. 61) its subsidiary debtor petition under Chapter X of the same Act and admitted it to reorganization as a wholly owned subsidiary of and in connection with the reorganization of Christopher Engineering Company, a corporation, whose debtor petition the Missouri Court had theretofore approved prior to the institution of the Chapter I-VII proceedings against National in Indiana (R. 61). The majority judges below concluded the Missouri Court's judgment was not res adjudicata and might be assailed in the Indiana Court.

### **JURISDICTION.**

The judgment of the Circuit Court of Appeals was entered on April 21, 1945 (R. 105). A petition for rehearing was filed on May 7, 1945 (R. 106), and denied on June

11, 1945 (R. 107), Judge Briggie dissenting. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended (28 USC 347 and 28 USC 350).

### **OPINIONS OF THE COURT BELOW.**

The judgment below was by a majority of the Judges and the Opinions (3) are reported 149 Fed. (2d) 548 (Advance Sheets, August 6, 1945), and are printed in the Record herewith filed. Opinion of the Honorable William M. Sparks, Circuit Judge (R. 91); Opinion of the Honorable J. Earl Major, Circuit Judge, concurring in part only with the Opinion of Judge Sparks (R. 100); and the Dissenting Opinion of the Honorable Charles G. Briggie, District Judge (R. 101).

The concurrence of the Judges was in fact upon the opinion of Judge Major (R. 100), which concurred with a similar conclusion of Judge Sparks found on page 94 of the Record, second paragraph. The concurrence was limited to the conclusion that it was essential to the jurisdiction of the Missouri Court that it be established that the National Aircraft Corporation was a subsidiary of Christopher Engineering Company on December 27, 1943, when the Christopher debtor petition was filed in the Missouri Court. That such fact could not be established by the implications of the judgment but could only be established either by express fact findings of the Missouri Court or by extrinsic evidence and the burden of proof was upon these petitioners.

### **QUESTIONS PRESENTED.**

#### **A.**

When a United States Bankruptcy Court, sitting as a reorganization court in a corporate reorganization proceeding under Chapter X of the Chandler Act, has

received and by an unambiguous judgment order has approved a voluntary subsidiary debtor petition and admitted the petitioner to reorganization, under Chapter X of the Chandler Act, as a subsidiary of and in connection with the reorganization of its parent corporation, whose debtor petition had theretofore been approved by the same Court, and as an incident to said judgment order has stayed, either expressly or by the operation of Section 148 of the Chandler Act (11 USC 548) a proceeding in ordinary bankruptcy under Chapters I to VII of the Chandler Act, pending against the subsidiary debtor in another bankruptcy court, and has enjoined the trustee therein appointed from selling the subsidiary debtor's assets, and such judgment order has not been directly attacked or modified, is such judgment res adjudicata on collateral attack or when questioned in the Court wherein the proceeding in ordinary bankruptcy, stayed by the judgment order, is pending?

#### B.

1. Whether or not when a United States Bankruptcy Court in a pending proceeding under Chapter X of the Chandler Act has received and approved by an unambiguous judgment order the voluntary debtor petition of a subsidiary corporation and has stayed and enjoined, either expressly or by the operation of Section 148 of the Bankruptcy Act (11 USC 548), an involuntary bankruptcy proceeding against the subsidiary pending in another district, the Court in which the ordinary proceeding is pending has authority to entertain a collateral attack on the judgment and on such attack to interpret for itself the jurisdictional requirements of Chapter X of the Chandler Act, under which the other Court purported to act, and on the basis of its own interpretation, which conflicts with the implications of the judgment order of the other Court which approved the debtor petition, deny full faith and credit to the judgment?

2. Whether or not express fact findings, either as to the requisite jurisdictional facts or to facts necessary to a judgment on the merits, are essential to the validity and conclusiveness of an unambiguous judgment of a United States Bankruptcy Court, when collaterally assailed, and whether or not as ruled by the Court below in the case involved herein, the failure of the Missouri Court expressly to find that National Aircraft Corporation was a subsidiary of Christopher Engineering Company on December 27, 1943, was sufficient to destroy the presumption arising from the implications of the judgment that the Missouri Court, as an incident to entering the judgment, had properly construed the applicable law and on proper evidence had found all facts necessary to the judgment as entered, including the fact, if necessary to its jurisdiction, that National Aircraft Corporation was in fact a subsidiary of Christopher Engineering Company when the latter's debtor petition was filed on December 27, 1943.

### C.

1. Whether or not, under the provisions of Chapter X of the Chandler Act, and more particularly under the provisions of Section 129 thereof (11 USC 529), a subsidiary corporation as defined in Section 106-13 (11 USC 506-13) by or against which no other petition under Chapter X of the Chandler Act is pending, may file its voluntary debtor petition as defined in Section 106-9 (11 USC 506-9) in a United States Bankruptcy Court which has theretofore approved the debtor petition of its parent corporation, notwithstanding the fact that after the approval of its parent debtor petition creditors of the subsidiary debtor had instituted a proceeding in involuntary bankruptcy under Chapters I to VII of the Chandler Act against the subsidiary debtor in another district and had secured its adjudication as a bankrupt therein, and whether or not, in such case, the power of the subsidiary to file or the power and jurisdiction of the

reorganizing court to receive and approve the subsidiary debtor petition and to stay the pending involuntary bankruptcy proceedings is cut off, impaired or limited by the institution or pendency of such ordinary bankruptcy proceeding?

2. And whether or not, when a voluntary subsidiary debtor petition is filed under the circumstances presented by sub-question 1 hereof in the court which has approved the debtor petition of the parent corporation, such court is vested with exclusive jurisdiction of the subsidiary debtor and its property wherever located, as provided generally by Section 111 of the Act (11 USC 511), and whether, when such court has heard and entered an order approving such voluntary subsidiary debtor petition, does such order operate as an automatic stay of a prior pending bankruptcy proceeding as provided generally by the provisions of Section 148 of the Act (11 USC 548)?

### STATEMENT.

The petitioner National Aircraft Corporation is in the anomalous situation of being a bankrupt whose assets must be liquidated in the Chapters I to VII proceeding by the terms of the judgment below and is at the same time a debtor whose assets must be conserved with a view of rehabilitation by the petitioner Duggan by virtue of the judgment of the Bankruptcy Court in Missouri. The Missouri judgment is final under Section 149 of the Chandler Act (11 USC 548). The Indiana judgment is final, subject only to the intervention of this Court.

The situation resulted from the following sequence of events:

On December 27, 1943, the Christopher Engineering Company, a Missouri corporation, filed in the Bankruptcy Court in Missouri and secured the approval of its debtor petition under Chapter X of the Chandler Act (R. 92-100).



On January 21, 1944, some three or four weeks later, creditors of the National Aircraft Corporation, an Indiana corporation, instituted involuntary proceedings in bankruptcy against it in the Indiana Bankruptcy Court under Chapter I to VII of the Chandler Act (R. 12). Such proceedings were had that it was adjudicated a bankrupt on February 7, 1944, and respondent Sansberry was appointed trustee to liquidate its assets (R. 12). He subsequently procured of the Referee authority to sell the real estate, factory and major assets of the bankrupt at public auction to be held on April 20, 1944 (R. 25).

On April 19, 1944, and prior to the sale, the National Aircraft Corporation filed in the Bankruptcy Court in Missouri, which had theretofore approved a debtor petition of Christopher Engineering Company, its debtor petition under Chapter X of the Chandler Act, alleging itself to be a subsidiary of that corporation and praying that a plan of reorganization be effected for it as a subsidiary of and in connection with the reorganization of its parent corporation. It also alleged the bankruptcy proceedings pending against it in the Indiana Bankruptcy Court, and the impending sale of its assets by respondent Sansberry and prayed that the Indiana bankruptcy be stayed and Sansberry and his auctioneer enjoined under the provisions of Section 113 of the Act (11 USC 513) (R. 58).

On the same April 19, 1945, the Missouri Court heard and approved the subsidiary debtor petition (R. 61) on the findings that the petitioner, National Aircraft Corporation, was a wholly owned subsidiary of Christopher Engineering Company, principal debtor in the pending proceedings, and entitled to file its petition in the proceedings of its parent company; that the petition complied with the requirements of Chapter X of the Bankruptcy Act and had been filed in good faith (R. 62).

In connection with the approval and as part of the same judgment order the Missouri Court appointed Petitioner Jerome F. Duggan, Trustee, to operate the business and manage the property of the subsidiary debtor (R. 62), enjoined respondent Sansberry and his auctioneer from interfering with the assets or selling them and enjoined Sansberry to deliver all assets in his possession to trustee Duggan (R. 65).

Copies of the judgment were personally served on Sansberry and his auctioneer next morning before the sale began (R. 67-41).

The Trustee, however, proceeded with the sale subject to the approval of his Referee and sold the real estate and factory and certain other assets of the National and reported his proceedings to the Referee. In his report he recited the service and order of the Missouri Court, and it was not contended that any party acted without knowledge of that judgment (R. 41).

The Referee concluded that the assets were in the custody and control of the Indiana Bankruptcy Court; that title to said assets was in Sansberry as Trustee in Bankruptcy; that no application for the release of the assets had been filed in that Court and, the matter having been referred to him as Referee, it was his duty to approve or disapprove the report of sale on ordinary considerations (R. 3). Whereupon the Referee by formal order approved the sale (R. 3-4).

No question is presented as to the competency of the various steps by which the cause reached the Court below. Having heard the cause the Court below affirmed the power of the lower Court to sell National's assets (R. 105).

## THE CONCURRENCE OF THE JUDGES.

The concurrence of a majority of the Court was narrowly restricted to a conclusion of law concurred in by Judge Major and Judge Sparks:

"that the burden rested upon appellants (petitioners) to show that National was a subsidiary of Christopher on December 27, 1943, when Christopher filed its petition for a reorganization in that Court. Appellant failed to carry the burden in this respect. The most that the finding of the St. Louis Court discloses is that National was a subsidiary on April 19, 1944 . . . a showing based upon such a finding did not deprive the Indiana Court of jurisdiction; in fact it had no right to relinquish jurisdiction." (Opinion of Judge Major, R. 100).

"Before there could be jurisdiction" (in the Missouri Court) "we think it must have been established that National was a subsidiary . . . on December 27, 1943, when Christopher filed a petition for reorganization . . . These were jurisdictional facts, which of necessity must have been proved before the Court in Missouri could possibly obtain jurisdiction of National or oust the jurisdiction of the District Court in Indiana, and the burden was upon petitioners to establish those facts. This they did not do." (Opinion of Judge Sparks found in second paragraph on page 94 of the Record.)

## REASONS FOR GRANTING THE WRIT.

### Summary.

#### *The Questions Generally.*

The decision below presents an important question of the construction of the National Bankruptcy Law, which has not been, but should be, determined by this Court.

The decision below, in effect, has applied to the corporation reorganization provisions of the Chandler Act a construction which will either destroy or so greatly impair the collateral effect of judgments of reorganization courts, as will be likely to defeat the Congressional purposes by complicating and limiting the administration of the Act and impede the prompt and effective rehabilitation of distressed corporations, contrary to the public interest.

#### A.

The Court below has decided an important question of Federal law, and disregarded and denied legal effect to an unambiguous judgment of a United States Bankruptcy Court where it had jurisdiction of the necessary parties and over the subject matter when questioned in a collateral proceeding.

Its decision is probably in conflict with the controlling decisions of this Court.

Chicot Drainage District v. Baxter State Bank, 308 U. S. 372, 376, 377 (84 L. Ed. 329, 335).

Kalb v. Feuerstein, 308 U. S. 433, 438, 439 (84 L. Ed. 370).

Stoll v. Gottlieb, 305 U. S. 165, 172 (83 L. Ed. 329).

And conflicts with the rulings of the several other Circuit Courts of Appeal, namely:

Walling v. Miller (CCA. 8), 138 Fed. (2d) 629, 632.

Rippberger v. A. C. Allyn Co. (CCA. 2 & 113 Fed. (2d) 629, 632, 333.

Nye v. U. S. (CCA. 4), 137 Fed. (2d) 73, 77.

Mar-Tex Realization Corp. v. Wolfson (CCA. 2), 145 Fed. (2d) 360, 362.

Re Park Beach Hotel Building Corp. (CCA. 7 96 Fed. (2d) 886.

*Supplies* *Director* *International Harvester* [0  
47/120 Fed (2/82, 1986 B.

1. The Court below has decided an important question of Federal law in concluding that in a case involving a collateral assault on a judgment of a United States Court of Bankruptcy it might review the legal and factual basis of the jurisdiction of such Court.

Its decision is probably in conflict with the controlling decisions of this Court cited under A above and conflicts with the rulings of the several other Circuit Courts of Appeals cited thereunder.

2. The Court below has decided an important question of Federal law and has concluded that special findings of fact are essential parts of a judgment of a Court of the United States and that, absent such finding, a clear and unambiguous judgment of such Court may be disregarded when assailed collaterally.

The decision of the Court probably conflicts in principle with the decision of this Court in *Milliken v. Meyer*, 311 U. S. 457, 461, 462.

And is in conflict with the ruling of the Tenth Circuit:

Tulsa City Lines v. Mains (CCA. 10), 107 Fed. (2d) 377, 382, citing.

Brown v. Metropolitan Life Insurance Co. (AP DC), 100 Fed. (2d) 98.

## C.

1. The decision of the Court below affirms the continued power of the Indiana Bankruptcy Court over the National Aircraft Corporation's assets after the Missouri Bankruptcy Court had approved its subsidiary debtor petition and admitted it to reorganization with its parent corporation. The decision presents an important question of Federal law and the interpretation of the corporate reorganization provisions of the Chandler Act with respect to the power of a reorganizing court to admit a subsidiary corporation to the reorganization proceedings of its parent corporation and its power to stay proceedings in ordinary bankruptcy instituted against the subsidiary in another district after the reorganizing court had approved the debtor petition of the parent corporation.

The decision below is of far-reaching importance and almost certain to thwart the purpose of the corporate reorganization provisions of the Chandler Act. The question has not been, but should be settled by a decision of this Court.

2. The decision presents an important question of Federal law and the interpretation of the Chandler Act which has not been, but should be settled by this Court.

The decision of the Court below affirmed the continued jurisdiction of the Indiana Bankruptcy Court over the assets of a subsidiary corporation derived from pending proceedings under Chapters I to VII of the Chandler Act, notwithstanding another Bankruptcy Court had admitted the subsidiary to its parent's Chapter X proceeding, has in effect construed the provisions of Chapter X of the Chandler Act in such a manner as to thwart the Congressional purpose in enacting the Act.

More particularly the decision of the Court below is inconsistent with the legislative purpose as disclosed by Sections 111, 113, 148 and 149 and other sections of Chapter X, whereby it was sought to confer broad and sweeping powers upon a Bankruptcy Court which had received and approved a debtor petition for relief under Chapter X of the Act, and particularly to confer upon such Court exclusive jurisdiction of the debtor and its property, wherever located, with power to stay ordinary proceedings in bankruptcy and power to determine its own jurisdiction with finality and effect, except as against direct proceedings instituted in the same Court within a time fixed by the statute.

### **Argument.**

#### *The Questions Generally.*

The conclusion of the Court below that the Indiana Court might deny recognition to the judgment of the Missouri Court admitting the National to reorganization with its parent corporation, and continue to control and sell the assets is of far-reaching importance.

The corporate reorganization provisions of the Chandler Act, it has always been assumed, were enacted for the purpose of providing a speedy and effective method for rehabilitating distressed corporations as necessary to the public economy. It was commonly recognized that this result could not be attained under the old system whereby out of regard to the dignity of established courts, it was felt improper to permit one court to interfere with the possession which another court had acquired over specific property. To this end the Chandler Act, as it was believed, conferred broad and sweeping powers upon reorganization courts in which debtor petitions were filed



and among the powers which it was believed were thus conferred was the power to supersede by a judgment unimpeachable collaterally and unimpeachable in the same court except by prompt direct appeal.

The decision of the Court below is inconsistent with that assumption. By denying to a judgment of a reorganizing court approving a debtor petition the quality of res adjudicata and asserting the right of a court whose proceedings are stayed by such judgment to review the legal and factual basis of such judgment in one case is in effect equivalent to ruling that such judgments may always be reviewed for the legal and factual basis of the reorganizing court's jurisdiction, with the result that in every case, where another court is in possession of assets necessary to rehabilitation, application must be made to it so that it may determine the reorganizing court's jurisdiction to enter the judgment.

The situation in this case is illustrative of the manner in which the decision below will effectively thwart the Congressional purpose, and the urgency for the intervention of this Court, to determine the jurisdiction, one way or the other, of the respective courts.

The judgments of the two courts involved are mutually destructive yet, except this Court does intervene there is no way to break the deadlock.

As a result of the conflicting judgments, National Aircraft Corporation is neither and both, a bankrupt, and a debtor.

By the judgment of the Missouri Bankruptcy Court, it is a subsidiary debtor, in process of rehabilitation under Chapter X of the Chandler Act, and petitioner Duggan is charged to collect and conserve its assets.

By the judgment of the Court below, the same corporation is a bankrupt, and its assets must be speedily liquidated and respondent Sansberry is charged with that duty, yet he cannot liquidate the assets that are in the possession of the Missouri Bankruptcy Court.

Neither trustee and neither court can collect the very large outstanding accounts the debtor-bankrupt has against the United States Government. In fact, due to the close relationship and stock ownership of the National, by the Christopher Company, principal debtor, no final settlement can be made for the parent corporation because the war contracts, now terminated, must be settled on a cost basis, and the overhead of the two corporations, and two partnerships, taken over by the Missouri Bankruptcy Court, have a common or intermingled overhead expense.

The most ridiculous thing about the whole situation is that both judgments are final and neither judgment is effective. The time for appeal in the Missouri Bankruptcy Court judgment expired on May 19, 1944. The judgment of the Court below, of course, is final, unless this Court intervenes.

In the recent case of *Williams v. North Carolina* (decided May 21, 1945, and not yet reported), Mr. Justice Frankfurter, indicated that the Supreme Court is open to parties to state court proceedings, where one court has failed to give full credit to the judgments of another state as required by the Constitution.

We respectfully suggest that this Court should also intervene to break a deadlock between two courts of the United States, when it is necessary, to vindicate not only the powers and jurisdiction of one or the other court, but

where it is required, to vindicate the dignity and carry out the purpose of the liquidation provisions of the Chandler Act or the corporate reorganization provisions. In the public interest both should not fail.

A.

The question presents the question as to whether an unambiguous judgment of a Reorganization Court, approving a subsidiary debtor petition is entitled to credit standing alone, when assailed collaterally or if the proponents must establish jurisdictional facts by express findings of the Court or by extrinsic evidence.

The Court below ruled it could not stand alone and was not res adjudicata on collateral assault.

It is submitted that the ruling probably conflicts with the decision of this Court in the several cases that follow:

Chicot County Drainage District v. Baxter State Bank, 308 U. S. 372; L. Ed. 329.

The Court, in ruling upon whether or not the judgment of a reorganization Bankruptcy Court rendered under a statute which had subsequently been determined unconstitutional might be questioned in a later proceeding brought by a party whose rights were ostensibly foreclosed by the judgment, said:

"The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But nonetheless they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which

they are asked to act. And determinations of such questions, while open to direct review, may not be assailed collaterally."

Upon the authority of *Stoll v. Gottlieb*, 305 U. S. 165, 171, 172; 83 L. Ed. 104, 108, 109, the Court said the foregoing rule

"applies equally to the decrees of the district courts sitting in bankruptcy, that is, purporting to act under a statute of Congress passed in the exercise of the bankruptcy power. The Court has the authority to pass upon its own jurisdiction and its decree sustaining jurisdiction against attack, while open to direct review, is *res judicata* in a collateral action" l. c. 377.

In the last named case, the Court received and approved a debtor petition of an alleged municipal corporation under the first Municipal Reorganization Act. It subsequently reorganized the Drainage District and cancelled bonds owned by the Baxter State Bank, who never appeared to the action or proved its bonds. Later the whole act was held unconstitutional by this Court in another proceeding, whereupon the Baxter Bank brought suit on its bonds, on the theory that the act, being void, the proceedings were a nullity. This Court, however, ruled the case, not on the validity of the act, and jurisdiction in fact, which could not be maintained, but upon settled principles of *res adjudicata*, and the impregnability of final judgments to collateral assault.

A like ruling was made by this Court in *Kalb v. Feuerstein*, 308 U. S. 433; 84 L. Ed. 370, in which case this Court considered like provisions of the Frazier-Lemke Act.

The ruling of the Court to the effect it might review the legal or factual basis of the Missouri Court's judgment directly conflicts with the ruling of probably all the circuits, including its own.

The following cases, directly affirm the rule, announced in principle, in the foregoing cases:

That as a court analogous to a court of general jurisdiction, as that term is applied to common law courts, courts of the United States, including bankruptcy courts, even without the aid of special statutes so declaring, have jurisdiction to determine their own jurisdiction, and that such determination is implied in the act of rendering the judgment, and when a judgment has been rendered, in a case where necessary parties are before it, its judgment is *res adjudicata*, both as to jurisdiction and on the merits when collaterally assailed:

"If one federal court failed to give effect to the judgment of another federal court, the Supreme Court of the United States, as the head of the judicial system of the United States, would compel it to do so because 'they are many members yet but one body'."

*Caterpillar Tractor Co. v. International Harvester Co.* (CCA. 3), 120 Fed. (2d) 82, 1. c. 86.

"When a collateral attack is made on a judgment, the Court will presume that all proceedings in the original action necessary to sustain the validity of the judgment, were regular," 1. c. 879.

*Pen-Kan. Gas and Oil Co. v. Gas Co.* (CCA. 6), 137 Fed. (2d) 871-879.

"Every court in rendering a judgment has the authority and does, tacitly or expressly, determine

its jurisdiction over the parties and over the subject-matter and its decree sustaining jurisdiction is not open to collateral attack," l. c. 632.

Walling v. Miller (CCA. 8), 138 Fed. (2d) 629-632.

"A court has power to determine whether or not it has jurisdiction of the subject-matter of a suit and of the parties thereto. As Mr. Justice Brandeis remarked in American Surety Company v. Baldwin, 287 U. S. 156; 77 L. Ed. 231. The principles of res judicata apply to questions of jurisdiction as well as to other issues," l. c. 333.

Rippberger v. A. C. Allyn Co. (CCA. 2), 113 Fed. (2d) 332-333.

"Whether the suit was or was not one of which the Court had jurisdiction, there was certainly power in the Court to determine the question of jurisdiction; and even if there was a lack of jurisdiction, it is well settled that a judgment based on an erroneous assumption of jurisdiction would not have been void or subject to collateral attack."

Nye v. U. S. (CCA. 4), 137 Fed. (2d) 73-77.

Mar-Tex Realization Corp. v. Wolfson (CCA. 2), 145 Fed. (2d) 360-362.

The Seventh Circuit itself, in an opinion by Judge Lindley, concurred in by Judge Sparks and Judge Major (the two judges who delivered the majority opinions in this case), ruled, that reorganizing courts have a jurisdiction that is "paramount and exclusive" and cannot be affected by proceedings in other courts, whether State or Federal, and that the only way of correcting error of a court taking jurisdiction of a reorganization proceeding is by appeal in the same action.

Re Park Beach Hotel Building Co. Corp. (CCA. 7), 96 Fed. (2d) 886 (77B) 891.

## B.

1. The question is a counterpart of A. We have pointed out in A that the general rule is that judgments of United States courts are res adjudicata, as to jurisdiction when collaterally assailed.

The Court below disregarded the rule of res adjudicata and reviewed the legal basis of the Missouri Court's jurisdiction and drew its own conclusions as to the jurisdictional requirements of Chapter X. The cases cited in A are in point.

It might be well to point out the incongruity of permitting a court, whose jurisdiction has been stayed by another court under special statutory powers, to review such judgment. It would be the equivalent of permitting a lower court, which has received a mandate of a superior court to review the jurisdiction of the superior court.

Our discussion under "C" will be applicable to this heading as well.

2. Question B-2 is aimed chiefly at the conclusion of the Court below in effect, that it would not assume, from the actual rendition of the judgment, that the Missouri Bankruptcy Courts had found all necessary jurisdictional facts. On the contrary, it wanted to know what particular jurisdictional facts it had found, and it wanted it by a special finding, so it could review its sufficiency under the law it deemed applicable.

No matter what the Court below called it, that is simply a collateral review. A forthright review of the law deemed applicable by the Missouri Judge, followed by an express declaration that on certain facts, he concluded from his construction of the Act that he had jurisdiction, would not have satisfied the Court below, if he failed to conclude that it was necessary to his jurisdiction that Christopher



owned National's stock on December 27, 1943. If Christopher had foreclosed on the stock later or succeeded in clearing title to the stock later it would not be sufficient in the eyes of the Court below, even if the Judge who rendered the judgment thought it was. No, the Court below wanted to interpret the law, but that would make it a court of review.

At any rate, findings of fact are not essential parts of a judgment, nor does the absence of findings render an unambiguous judgment subject to collateral attack. The Court in

*Tulsa City Lines v. Mains* (CCA. 10), 107 Fed. (2d) 377-382,

pointed out that findings of fact and conclusions of law, are for the information of appellate courts entertaining direct appeals, citing *Brown v. Metropolitan Life Insurance Co.* (App. D. C.), 100 Fed. (2d) 98.

And the decision of the Court below probably conflicts, in principle, with the decision of this Court in *Millikin v. Meyer*, 311 U. S. 457, 85 L. Ed. 278, wherein this Court ruled that even an "irreconcilable contradiction" between the findings of fact and the judgment of a court of record did not impeach or render the judgment subject to collateral assault.

### C.

1. Regardless of whether the Court below had jurisdiction to interpret the corporate reorganization provisions of the Chandler Act, it has in fact placed an interpretation thereon which is almost certain to thwart the purpose of those provisions of the Act.

It has done that in the first place by asserting a right to deny to reorganizing courts exclusive jurisdiction over the assets and to compel, in any case, an application to it or some other court for possession. Application denotes a hearing; a hearing a trial; a trial a judgment; a judgment an appeal by some interested party and so on. It all adds up to delay, and worst of all it imports a discretion in the collateral court to surrender or retain the assets. If the subsidiaries were numerous, and surrender of the assets was discretionary, it is hardly possible that all the collateral courts would surrender, yet one hold-out might block the reorganization of a parent corporation as well as the numerous subsidiaries.

The reluctance of courts to surrender jurisdiction over property once they have acquired possession is understandable and that is why Chapter X was passed.

In the case of *Warder v. Brady* (CCA. 4), 115 Fed. 2d 89, the Court pointed out a number of limitations on the power of bankruptcy courts which had been modified by the Chandler Act. Referring to the former necessity of going through a complicated procedure to acquire possession of assets the Court said:

"We are concerned in the pending case, however, with the Act of 1938, which was passed for the very purpose of modifying these restrictions when engaged in a reorganization proceeding under Chapter X of the Statute."

"Moreover the rule of comity is relaxed with respect to proceedings under Chapter X."

2. With respect to the specific sections of the statute involved, we submit that the conclusion of the Court below, that the Indiana Bankruptcy Court or its trustee by virtue of an ordinary bankruptcy proceeding retained

any jurisdiction over the assets, after the National's debtor petition had been sustained or had any power to review that judgment or any discretion with respect to surrendering the assets is of such far reaching importance, and so in conflict with the obvious purpose of the statute, as to impel this Court to establish the proper interpretation once for all.

The conclusion of the Court below probably grows out of a sort of vestigial concept that the two courts are co-ordinate. They are no more co-ordinate, when one is proceeding under Chapter X and the other under Chapters I to VII than a district judge, while sitting as an appellate judge, is a co-ordinate of another district judge who is conducting a jury trial. If the statute gives to one, a power over the jurisdiction of the other they are not co-ordinate. One is superior, the other inferior in jurisdiction.

The relevant sections of Chapter X answer the question and clearly:

Section 111. Where not inconsistent with the provisions of this chapter, the Court in which the petition is filed shall for the purposes of this chapter have exclusive jurisdiction over the debtor and his property wherever located (11 USC 511).

It was clearly not the purpose of Congress to exclude from the jurisdiction of the reorganizing court, property in the possession of ordinary courts of bankruptcy.

Section 113. Prior to the approval of a petition, the Judge may, upon cause shown, grant a temporary stay until the petition is approved or dismissed . . . of a prior pending bankruptcy . . . (USC 513).

It is obvious that there could be no sound purpose in authorizing a court to stay a pending bankruptcy until

the petition is approved and not provide for the extension of the stay when the petition has been approved.

Section 148. Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy . . . (11 USC 548).

And the decision of the Court below is inconsistent with the implications of

Section 149. An order which ~~has become~~ final approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the Court (11 USC 549).

The decision probably conflicts in principle with the decision of this Court in the case of **Kalb v. Feuerstein**, 308 U. S. 433, previously cited. In this case this Court interpreted a provision of the **Frazier-Lemke Act** which, in substantially the same terms as are in Section 111 (11 USC 511) of Chapter X, the Court said:

"The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction of farmer-debtors and their property and has by its act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its act is the supreme law of the land which all courts, state and federal, must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone."

The Court continued and said that the act provided:

"The filing of a petition \* \* \* shall immediately subject the farmer and all his property, wherever located \* \* \* to the exclusive jurisdiction of the court, including \* \* \* the right of the equity of redemption where the period of redemption has not expired \* \* \*"

Compare the language just quoted from the Kalb case with the sections of Chapter X of the Chandler Act, just quoted.

It is perfectly clear that reorganization proceedings for the relief of debtors would not be effective unless some certainty could be attached to the orders and judgments of the reorganization court, or, if they could be attacked for technical or other jurisdictional defects long subsequent to the entering of such judgments. And it is also clear the purpose would be thwarted if the reorganization court or trustee had to fight numerous courts for assets necessary to rehabilitation.

But, the respondent will reply, the case involves a subsidiary, and a United States Court of Bankruptcy already has its assets. We have pointed out that unless an exception is made in the case of a subsidiary, a Reorganization Court has acquired the exclusive legal right to those assets, and could have enjoined that proceeding. It didn't have to enjoin it after it approved the debtor petition. Section 148 (11 USC 548) automatically stayed the other courts proceeding.

But let us examine the application of the Statute to subsidiary debtors. There is some vagueness which this Court ought to clear up.

The authority of the Missouri Court is clearly traceable by the application of the several sections of Chapter X of the Chandler Act.

### **Corporate Reorganizations Chapter X.**

**Section 106 (13).** "Subsidiary shall mean a corporation . . . the majority of whose stock having power to vote . . . is owned . . . by another parent corporation, a petition by or against which has been approved."

**Section 106 (9).** "Petition shall mean a petition filed under this Chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected."

**Section 126.** Corporations ". . . may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

**Section 129.** "If a corporation be a subsidiary an original petition by or against it may be filed either as provided in Section 128 of this Act or in the Court which has approved the petition by or against its parent corporation."

It will be noticed that Section 129 without qualification gives to a subsidiary who desires to file, or to anyone who desires to file a debtor petition against it, the option to file "in the Court which has approved the petition by or against its parent corporation."

It is easy to see how Congress, eager to get away from the complicated and inefficient system formerly prevailing "cut across lots" as it were, and

"By a wide sweep of power exclusive jurisdiction of all property wherever located is given with the power to stay or enjoin 'any judicial proceeding to enforce any lien upon the estate, as well as the power

to stay not only the commencement but also the continuation of suits against the debtor."

"The Court thus acquiring jurisdiction over the property of the debtor does so throughout the United States as against any state or federal receiver theretofore appointed in any other proceeding."

In Re Grayling Realty Corp., 74 Fed. (2d) 734.

But it is hard to conceive how Congress could have intended to leave subsidiary corporations, outside that sweep of power. There is certainly no doubt that reorganization courts were given power to stay a bankruptcy proceeding, even before approving a petition (Sec. 113) and the act of approving automatically stays a pending bankruptcy. Why should Congress desire to exclude subsidiaries? It in fact did not exclude subsidiaries.

Respondent, and one of the concurring judges below, tried to make a play on the adjective "original" as used in Section 129. The statute defines a "petition" as a petition "filed under this chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected" (Sec. 106-9) (11 USC 506-9).

Having defined petition as a Chapter X petition, Section 129 says an "original petition" may, at the option of the party, be filed in the court which has approved the parent petition. Although we have used the same noun, "petition," respondent says loses its significance or gains a new significance when it is preceded by an adjective. Maybe it does. Original means: first or prime—the first of its kind. Original petition would in common language mean the first or prime petition filed under Chapter X, "proposing that a plan of reorganization be effected" (Sec. 106-9).



But respondent says "original petition," as used under Section 128, is subject to the inference that Congress intended to limit the right to file petitions under Sec. 128 to those corporations that did not have ordinary bankruptcy proceedings pending. Congress may have meant that, when it wrote Section 128. It is doubtful. It was probably a hangover from one or more of the old statutes. If it is found to be inconsistent with the Congressional purpose, the courts can eliminate it by construction.

But we are not concerned with Section 128. The National filed under Section 129. Whatever the purpose of Section 128, Section 129 is workable and meets the Congressional purpose.

In the report of the Senate Committee on the Judiciary, May 27, 1938, p. 25, with reference to the Chandler Act, it is stated:

"Section 129 permits an exception to the regular venue requirements in situations where the Court which already has jurisdiction of the reorganization of a parent corporation should also have before it any proceedings for the reorganization of its subsidiary or subsidiaries. Petitions by or against subsidiaries may be filed with the Court in which the petition involving the parent corporation has been approved."

Congress, in enacting Chapter X, evidently did not intend to ignore the well known fact that a large portion of the business of corporations in the United States is carried on in co-operation with corporate subsidiaries, and hence it recognized and defined subsidiaries [Section 106 (13)]. In that definition the term subsidiary applies only to a corporation when a petition by or against the parent had been approved. The subsidiary is not a subsidiary within the meaning of the statute until its parent's petition has been approved.

In this connection Mr. Weinstein in his "The Bankruptcy Law of 1938" comments that the Chandler Act has restricted the definition of subsidiary as found in old Section 77-B in order to limit the right to file the petition by or against the subsidiary to cases where a petition by or against the parent has been filed and actually approved.

"Since the petition by or against the subsidiary is in connection with or is part of the reorganization of the parent corporation, it was deemed advisable and in the interest of proper procedure to withhold this right until the proceeding by or against the parent has acquired permanency, at least to the extent of the approval of the petition."

Weinstein, "The Bankruptcy Law of 1938," p. 197.

### CONCLUSION.

We have stated our "reasons" in considerable detail and, for the sake of brevity, will refrain from filing a more extended Brief.

May we urge that, in our opinion, the matters involved in this application are of sufficient public importance to justify the Court in granting the writ.

Respectfully submitted,

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*Pro se.*

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*of Counsel.*

## APPENDIX.

### Relevant Sections of Chandler Act from Ordinary Bankruptcy Section (Chapter III). (Emphasis Added).

Section 48 (g):

"g. In the case of a plan of reorganization confirmed under this Act, the compensation of a marshal, receiver, or trustee in a prior pending bankruptcy proceeding superseded by the reorganization proceeding shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services . . . " [11 USC 76 (g)].

### From Corporate Reorganization Sections. (Chapter X.)

Section 101. The provisions of this chapter shall apply exclusively to proceedings under this chapter (11 USC 501).

Section 106. (5) Debtor shall mean a corporation by or against which a petition has been filed under this chapter (11 USC 506-5).

Section 106 (9). Petition shall mean a petition filed under this chapter by a debtor, creditor or indenture trustee proposing that a plan or reorganization shall be effected (11 USC 506-9).

Section 106 (13). Subsidiaries shall mean a corporation substantially, all of whose properties are operated under lease or operating agreement, or the majority of whose stock having to vote for the election of directors, trustees, or other similar controlling bodies, is owned, directly or indirectly, through an intervening corporation or other medium by another parent corporation, a petition by or against which has been approved (11 USC 506-13).

**Section 111.** Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property wherever located (11 USC 511).

**Section 112.** Prior to the approval of a petition, the jurisdiction, powers and duties of the court, and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication (11 USC 512).

**Section 113.** Prior to the approval of a petition, the Judge may, upon cause shown, grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property and may upon cause shown enjoin or stay, until the petition is approved or dismissed, the commencement or continuation of a suit against a debtor (11 USC 513).

**Section 114.** Upon the approval of a petition, the jurisdiction, powers and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication (11 USC 514).

**Section 115.** Upon the approval of a petition the Court shall have and may, in addition to the jurisdiction, powers and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have had if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature (11 USC 515).

(3)

Section 116. Upon the approval of a petition, the Judge may, in addition to the jurisdiction, powers and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the Court—(3) **authorize a receiver or trustee or a debtor in possession**, upon such notice as the Judge may prescribe and upon cause shown, **to lease or sell any property of the debtor**, whether real or personal, upon such terms and conditions as the Judge may approve; and (4) in addition to the powers provided by Section 11 of this Act **enjoin or stay until final decree** the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor (11 USC 516).

Section 126. A corporation or three or more creditors who have claims against a corporation or its property amounting in the aggregate to \$5000.00 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against the corporation is pending under this chapter, file a petition under this chapter (11 USC 526).

Section 127. A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication of a corporation (11 USC 527).

Section 128. If no bankruptcy proceeding is pending an original petition may be filed with the Court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction (11 USC 528).

Section 129. If a corporation be a subsidiary an original petition by or against it may be filed either as provided in Section 128 of this Act or in the court which has ap-

proved the petition by or against its parent corporation (11 USC 528).

**Section 131.** A creditor's or indenture trustee's petition shall, in addition to the allegations required by Section 130 of this Act, state—(1) that the corporation was adjudged a bankrupt in a pending proceeding in bankruptcy; or—(5) that the corporation has committed an act of bankruptcy within four months of the filing of the petition (11 USC 531).

**Section 148.** Until otherwise ordered by the Judge, an order approving the petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership, or of any act or other proceeding to enforce a lien against the debtor's property (11 USC 548).

**Section 149.** An order which has become final approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court (11 USC 549).

**Section 156.** Provides for the appointment of a trustee or the continuance of the debtor in possession (11 USC 549).

**Section 189.** A trustee or debtor in possession, upon authorization by the Judge, shall operate the business and manage the property of the debtor, during such period, limited or indefinite, as the Judge may from time to time fix, and during such operation or management shall file reports thereof with the Court at such intervals as the Court may designate (11 USC 589).

**Section 243.** In the case of the dismissal of a proceeding under this chapter, and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the Judge, in the course of

the proceeding under this chapter, to the Referee, Marshal, receiver, or trustee in the bankruptcy proceeding for services rendered by them in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceedings, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this Act fixing their compensation in a bankruptcy proceeding (11 USC 648).

**Section 256. A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any state in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made (11 USC 656).**

**Section 257. The trustee appointed under this chapter, upon his qualification, or if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee, in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgage under a mortgage.**

**Section 258. The Judge shall make such provision as may be equitable for the protection of the obligation incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable costs and expenses incurred therein as may be allowed by the Judge (11 USC 657).**



Section 259. Upon the dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated, and the Judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in Article XIII of this chapter, and shall make appropriate provision for the re-transfer of said property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by a trustee or debtor in possession, and, for the payment of the costs and expenses of the proceedings (11 USC 659).

Order of United States District Court in Bankruptcy, Eastern Division, Eastern District, of Missouri, dated August 10, 1945 (omitting caption and finding).

Ordered that Jerome E. Duggan, Trustee, be and is hereby authorized and directed to cause to be prepared and filed in the United States Supreme Court his petition for certiorari to review the opinion and judgment of the United States Circuit Court of Appeals for the Seventh Circuit rendered on the 21st day of April, 1945, Motion for Rehearing overruled on June 11, 1945, and that the National Aircraft Corporation be allowed to join the said Trustee in said petition and in the Brief.

RICHARD M. DUNCAN.

Judge.

JAN 25 1946

JAN 25 1946

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1945

No. 418

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES OF CHRISTOPHER ENGINEERING COMPANY, AND NATIONAL AIRCRAFT CORPORATION, *Petitioner*.

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION.

No. 419

NATIONAL AIRCRAFT CORPORATION, *Petitioner*.

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONERS' BRIEF

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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1945

No. 418

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES OF CHRISTOPHER ENGINEERING COMPANY, AND NATIONAL AIRCRAFT CORPORATION, *Petitioner*,

*vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION.

No. 419

NATIONAL AIRCRAFT CORPORATION, *Petitioner*,

*vs.*

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners' Statement, Brief  
and Argument

OPINIONS OF THE COURT BELOW.

The judgment below was by a majority of the judges and the opinions (3) are reported 149 Fed. (2d) 548, and are printed in the Record herewith filed: opinion of the

Honorable William M. Sparks, Circuit Judge (R. 91); opinion of the Honorable J. Earl Major, Circuit Judge, concurring in part only with the opinion of Judge Sparks (R. 100); and the dissenting opinion of the Honorable Charles G. Briggie, District Judge (R. 101).

### **JURISDICTION.**

The judgment of the Circuit Court of Appeals was entered on April 2, 1945 (R. 105). A petition for rehearing was filed on May 7, 1945 (R. 106), and denied on June 11, 1945 (R. 107), Judge Briggie dissenting. The jurisdiction of this Court was timely invoked under Section 240 (a) of the Judicial Code as amended (28 USC 347 and 28 USC 350) and Section 24 (c) of the Chandler Act [11 USCA 47 (c)], and certiorari granted November 5, 1945 (R. 112).

### **STATEMENT.**

The case has come to this Court on certiorari to review a judgment of the Circuit Court of Appeals for the Seventh Circuit rendered in two appeals in which Jerome F. Duggan as Trustee in Reorganization for National Aircraft Corporation, a subsidiary debtor, and of Christopher Engineering Company, a corporation, principal debtor, by appointment of the United States Court of Bankruptcy for the Eastern Division of the Eastern District of Missouri in proceedings under Chapter X of the Chandler Act (R. 62) and the National Aircraft Corporation, a subsidiary debtor, by adjudication of the same Court (R. 61) respectively were appellants, and James C. Sansberry, trustee of the estate of National Aircraft Corporation, bankrupt, by appointment of the United States Court of Bankruptcy for the Southern District of Indiana in an ordinary bankruptcy proceeding pending in that Court, was appellee

The appeals below were tried on a single record and determined by a single judgment (R. 105).

The appeal below was immediately from an order of the Referee in Bankruptcy for the Southern District of Indiana dated May 2, 1944 (R. 3), approved on review by the Judge (R. 68) confirming the sale of the real estate and major assets of the National Aircraft Corporation, had in an ordinary bankruptcy proceeding after the same corporation had been admitted to reorganization by the Missouri Court in a proceeding for the reorganization of its parent corporation, the Christopher Engineering Co. (R. 61).

(The bankruptcy courts involved will hereinafter be referred to as the **Indiana Court** and the **Missouri Court**, respectively; the parent corporation as **Christopher** and the subsidiary as **National**.)

The appeals below primarily involved a conflict of jurisdiction, over the assets of National, between the Indiana Court, as a court in ordinary bankruptcy, and the Missouri Court, as a reorganization court under Chapter X of the Chandler Act, as a result of which the Missouri Court was undertaking to conserve the National assets with a view to reorganization and the Indiana Court was simultaneously proceeding to sell and liquidate the same assets.

The Court below, by a majority of the Judges, affirmed the continued jurisdiction of the Indiana Court to sell the National assets in the proceeding in ordinary bankruptcy pending in that Court, notwithstanding the Missouri Court, prior to the sale had received and approved National's voluntary subsidiary debtor petition (R. 61) as a wholly owned subsidiary of Christopher then in

process of reorganization in the Missouri Court. The conflicting claims of jurisdiction arose from the following sequence of proceedings in the two Courts:

On **December 27, 1943**, the Missouri Court approved the voluntary debtor petition of Christopher for reorganization under Chapter X of the Chandler Act (R. 92-56) and, subsequently, on **April 19, 1944**, received and approved the voluntary subsidiary debtor petition of National and admitted it to the pending reorganization proceedings of Christopher as a wholly owned subsidiary of the principal debtor, and enjoined the respondent, Sansberry, from proceeding with the sale, which subsequently became the subject matter of the appeals below (R. 62).

On **January 21, 1944** (R. 7), creditors of National had filed a petition in involuntary (ordinary) bankruptcy against it in the Indiana Court and it had been adjudicated a bankrupt on February 7, 1944 (R. 7), and on March 7, 1944, respondent Sansberry was appointed trustee in ordinary bankruptcy (R. 8); all before its subsidiary debtor petition was filed in Missouri; but after Christopher's debtor petition had been approved by the latter Court.

On **March 21, 1944**, Sansberry, the liquidating trustee appointed in the Indiana proceedings, filed his petition to sell the real estate and personal property of the bankrupt (R. 8) and on **April 6, 1944**, the Referee sustained the petition to sell (with minor exceptions) and directed that an auctioneer be employed and the property sold at public auction on **April 20, 1944** (R. 28).

On **April 19, 1944** (prior to the date fixed by the Indiana Court for the sale), the National intervened in the reorganization proceedings of Christopher then pending in the Missouri Court and filed its petition to be admitted

to reorganization in said proceedings as a subsidiary of Christopher (R. 58). In its petition it recited the ordinary bankruptcy proceedings pending against it in the Indiana Court and the order of adjudication and reference and the further fact that the Indiana Trustee had advertised a sale of its property to be held on the 20th day of April, 1944 (R. 59), and prayed that the Indiana proceedings be stayed and that the Indiana Trustee and his auctioneer be enjoined from selling the property (R. 60).

By judgment order on **April 19, 1944** (R. 61), the Missouri Court adjudged the National to be a wholly owned subsidiary of Christopher and authorized to file its petition in the pending proceedings of its parent company (R. 62); adjudged that the petition had been filed in good faith and approved the same and appointed petitioner Jerome F. Duggan Trustee in Reorganization with all the powers consistent with Chapter X, and authorized him to manage and operate the business of said subsidiary. The order approving the petition contained the usual injunctive and stay provisions and a specific injunction restraining James C. Sansberry, the Indiana Trustee, and his auctioneer, from selling or disposing of the assets (R. 65).

The order of the Missouri Court was served on Sansberry and his auctioneer, the Winternitz Company, by the United States Marshal for the Southern District of Indiana on **April 20th**, and before the sale was cried (R. 67, 41, 34).

Notwithstanding the order and injunction issued by the Missouri Court, Sansberry, the Trustee, and his auctioneer "upon the advice of his counsel, with the knowledge of the Referee in Bankruptcy, concluded to proceed with the sale" (R. 34) and on **April 21, 1944**, made formal report of his proceedings and motion to confirm to the

Referee, who set the same for hearing on **April 25, 1944**, on which last date the Referee continued the hearing on the Report of Sale to **May 2, 1944**, upon the representation that:

"The Trustee and his counsel intend to proceed to St. Louis, Missouri, to ascertain the facts surrounding the entering of an order by the Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, in the matter of Christopher Engineering Company, in proceedings for the reorganization of a corporation, being Cause No. 10947 in said Court, whereby the Trustee in Bankruptcy herein was restrained and enjoined from doing any act or thing whatsoever affecting the property and assets of the above named bankrupt."

The Referee ordered that pending the "holding of said further hearing" the Indiana Court retain full and complete jurisdiction over all the assets of the bankrupt (R. 43).

On **May 2, 1944**, the Referee entered the order immediately involved in the appeal below approving and confirming the sale (R. 3).

### **REFEREE'S CONCLUSIONS.**

The order of the Referee approving the sale was based upon his conclusion:

"\* \* \* the assets offered for sale \* \* \* are in the custody and control of the United States District Court for the Southern District of Indiana and that no application for the release of said assets has been filed in said Court, and that title to said assets is in said James C. Sansberry, as trustee in bankruptcy of the above named bankrupt, and the Referee further finds that said assets being in the custody and control of said Court, and the matter having been referred



to the Referee, it is the duty of the Referee to determine whether or not said Report of Sale should be approved and the sales to the highest bidders for the assets of the bankrupt confirmed, and that if said sale was fairly held and adequately attended and said bids are adequate and reasonable, the sales to said bidders should be confirmed." (R. 3.)

### **PETITIONERS' APPEAL AND MOVE TO STAY PROCEEDINGS.**

On May 10, 1944, the National Aircraft Corporation and Jerome F. Duggan, its reorganization trustee, appointed by the Missouri Court, filed their separate **petitions for review** of the order confirming the sale (R. 44-48) and their separate **"Motions and Suggestions to Stay Proceedings"** (R. 47-53), assigning as grounds therefor the grounds assigned in the petition for review, namely, that the order was erroneous and in excess of the jurisdiction of the Referee because of the proceedings had in the Missouri Court and the stay therein entered. Simultaneously with the Petitions to Review and Motion to Stay, which were filed with the Referee, Jerome F. Duggan, the Missouri reorganization trustee, filed with Judge Baltzell, Bankruptcy Judge in Indiana, his **"Suggestions of Superseding Reorganization Proceedings and Motion to Stay Proceedings,"** together with a certified copy of National's subsidiary debtor petition and the order of the Missouri Court approving it (R. 56).

### **REFeree'S ORDER AFFIRMED BY JUDGE.**

On June 5, 1944, the Judge (Indiana) overruled the petitions of National Aircraft Corporation and Duggan, Trustee, for review, without any express ruling on Duggan's **"Suggestions of Superseding Reorganization Proceedings and Motion to Stay Proceedings,"** (R. 68).

On June 29, 1944, Duggan's Notice of Appeal and Assignment of Error and Statement of Points Relied on (R. 71) were filed and on the same day National Aircraft Corporation's Notice of Appeal (R. 78) and Assignments of Error and Points (R. 75) were filed.

### **THE ISSUES BELOW.**

The errors assigned (R. 70-71) and points relied upon below (R. 71-75) were identical.

In substance they were that the Indiana Court was without jurisdiction to sell the assets because of the exclusive and superseding jurisdiction of the Missouri Court. That the order was void and in excess of jurisdiction and infringed on the Missouri Court's jurisdiction.

### **THE CONCURRENCE OF THE JUDGES BELOW.**

The concurrence of the majority judges was in fact or substance upon the opinion of Judge Major (R. 100), which concurred with a similar conclusion of Judge Sparks found on page 94 of the Record in the second paragraph. The concurrence was limited to the conclusion that it was essential to the jurisdiction of the Missouri Court as supersessive to that of the Indiana Court, that it be established, either in the Missouri Court or in the Indiana Court (it is not clear) that the National was a subsidiary of Christopher on December 27, 1943; when the Christopher debtor petition was filed in the Missouri Court. In effect the Court ruled that the date when the relationship began could not be established by the implications of the judgment, but could only be established by express fact-finders of the Missouri Court or by extrinsic evidence and the burden of proof was upon the appellants.

The applicable paragraphs of the opinions follow:

Judge Major concluded:

"That the burden rested upon appellants (petitioners) to show that National was a subsidiary of Christopher on December 27, 1943, when Christopher filed its petition for a reorganization in that Court. Appellant failed to carry the burden in this respect. The most that the finding of the St. Louis Court discloses is that National was a subsidiary on April 19, 1944 \* \* \* a showing based upon such a finding did not deprive the Indiana Court of jurisdiction; in fact it had no right to relinquish jurisdiction" (Opinion of Judge Major, R. 100).

Judge Sparks concluded:

"Before there could be jurisdiction" (in the Missouri Court) "We think it must have been established that National was a subsidiary \* \* \* on December 27, 1943, when Christopher filed a petition for reorganization. \* \* \*. These were jurisdictional facts, which of necessity must have been proved before the Court in Missouri could possibly obtain jurisdiction of National or oust the jurisdiction of the District Court in Indiana, and the burden was upon petitioners to establish those facts. This they did not do." (Opinion of Judge Sparks found in second paragraph on page 94 of the Record.)

### THE DISSENTING OPINION BELOW.

Judge Briggie, dissenting, concluded: The integrity of the findings of the Missouri Court was not a matter for the consideration of the Indiana Court or the Court below on appeal, and that regardless of erroneous conclusions of fact or law the judgment must be accorded full faith and credit in the Indiana Court, which was only called upon to review the propriety of an order approv-

ing the sale of assets of the subsidiary in Indiana where such sale had been enjoined by the Missouri Court.

"The jurisdiction of the Missouri Court for purposes of reorganization is paramount and cannot here be challenged. Indiana must, in my judgment, yield to Missouri" (R. 101, 104).

### QUESTIONS PRESENTED

In due time the petitioners applied to this Court for certiorari to test the ruling of the Circuit with respect to the conclusiveness of the Missouri judgments on collateral attack and the power of the Indiana Court to review the legal or factual basis of the judgment and to continue to exercise jurisdiction over and to sell the National assets in the ordinary proceedings in Indiana. There was also submitted to this Court the question as to the proper construction of the corporate reorganization provisions of the Chandler Act with respect to the right of subsidiary corporations to petition for reorganization before the Court, which has approved the parent's petition, notwithstanding an ordinary proceeding in bankruptcy is pending against the subsidiary in another District.

On November 5, 1945, the writ was granted in general terms (R. 112).

### ASSIGNMENT OF ERRORS.

#### I.

The Court below erred in denying full faith and credit to the mandate and implications of the judgment order of the Missouri Court approving National's voluntary subsidiary debtor petition and erred in affirming the continued power of the Indiana Court to sell National's assets after the Missouri Court had admitted it to reorganization under

Chapter X of the Chandler Act and stayed the pending proceeding in ordinary bankruptcy and enjoined the respondent from selling the assets.

## II.

Regardless of its power or lack of power collaterally to interpret the corporate reorganization provisions of the Chandler Act, or to review the legal or factual basis of the Missouri judgment and deny its full faith and credit, the Court below erred and interpreted the Chandler Act in a manner calculated to thwart the purposes of Congress, by denying to a reorganization Court sweeping, exclusive and supersessive jurisdiction over the debtor's assets wherever located.

## SUMMARY OF THE ARGUMENT.

### I.

The unambiguous judgment order of the Missouri Court was res judicata and binding on the Indiana Court and effectively stayed its power to sell National's assets.

(Unless otherwise noted references are to section numbers of the Chandler Act.)

### A.

#### Constitution and Jurisdiction of the Respective Courts.

Both Courts are designated courts of bankruptcy with such jurisdiction as will enable them to exercise original jurisdiction under the Chandler Act.

Section 1 (a), 2 (a) [11 USCA 1 (a); 11 (a) ].

Neither the Court below (7th Circuit) nor the Indiana Court have supervisory or appellate jurisdiction over the Missouri Court, which is in the Eighth Circuit.

The Indiana Court as an incident to a proceeding in ordinary bankruptcy had no statutory power to stay or supersede the jurisdiction of a reorganization court proceeding under Chapter X. The Missouri Court, on the contrary, proceeding under Chapter X, had express statutory authority to stay and supersede the jurisdiction of a court proceeding in ordinary bankruptcy:

"Section 111. Where not inconsistent with the provisions of this Chapter, the Court in which a petition is filed, shall, for the purposes of this Chapter, have exclusive jurisdiction of the debtor and its property wherever located." 11 USCA 511.

"Section 113. Prior to the approval of a petition the Judge may, upon cause shown, grant a temporary stay, until the petition is approved or dismissed, of a prior proceeding in bankruptcy \* \* \* 11 USCA 513.

"Section 148. Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy \* \* \* 11 USCA 548.

"Section 149. An order, which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court." 11 USCA 549.

As a court of general jurisdiction over the subject matter (reorganization of corporations) the Missouri Court had power to hear and determine petitions invoking its jurisdiction and to make orders which were not subject to collateral attack.

Securities and Exchange Comm. v. United States Realty and Imp. Co., 310 U. S. 434-446, 84 L. Ed. 1293-1299.

Pennsylvania v. Williams, 294 U. S. 176-180, 79 L. Ed. 841-845.

## B.

The judgment of the Missouri Court was *res judicata* and, with all its implications, conclusive as against collateral attack in the Indiana Court.

The only necessary party to a voluntary corporate reorganization proceeding is the corporation itself, hence, upon National filing its petition proposing that a plan be effected in the Missouri Court, there was fulfilled the necessary conditions prerequisite to jurisdiction or power to adjudge the petition on the merits and to enter a judgment impregnable to collateral attack, namely: Jurisdiction over the general type of action and jurisdiction of the necessary parties.

See "Principles of Corporate Reorganization,"  
Thomas F. Finleiter (1937), page 139.

The principles of *res judicata* are applicable to questions of jurisdiction and the Missouri Court had power to determine its own jurisdiction, as against collateral assault.

Chicot County Drainage District v. Baxter State Bank, 308 U. S. 371-377, 84 L. Ed. 329-334.

Kalb v. Feuerstein, 308 U. S. 433, 439, 84 L. Ed. 370, 375.

Milliken v. Meyer, 311 U. S. 457, 462, 85 L. Ed. 278, 282.

International Tractor Co. v. International Harvester Co. (CCA 3), 120 Fed. (2d) 82-86.

Rippberger v. A. C. Allyn Co. (CCA 2), 113 Fed. (2d) 332-333.

"The principles of *res judicata* apply to questions of jurisdiction as well as to other questions."  
Mr. Justice Brandeis.

American Surety Co. v. Baldwin, 287 U. S. 156, 166, 77 L. Ed. 231-238.



"Whether the suit was or was not one of which the Court had jurisdiction, there was certainly power in the Court to determine jurisdiction; and even if there was a lack of jurisdiction, it is well settled that a judgment based on an erroneous assumption of jurisdiction would not have been void or subject to collateral attack." Citing *Des Moines N. & R. Co. v. Homestead Co.*, 123 U. S. 552-557, 31 L. Ed. 202.

*Nye v. U. S.* (CCA 4), 137 Fed. (2d) 73-77.

Reorganization courts have a jurisdiction that is paramount and exclusive and cannot be affected by proceedings in other courts, whether state or federal and the only way of correcting error of the court taking jurisdiction of a reorganization proceeding is by appeal in the same action. Judge Lindley, Judge Sparks and Judge Major (the majority Judges below in the instant case) concurring.

*Re Park Beach Hotel Building Corporation* (CCA 7), (77b), 96 Fed. (2d) 886-891.

*Warder v. Brady* (CCA 4), 115 Fed. (2d) 89-93.

*In re Maier Brewing Company*, 38 Fed. Supp. 806-811, 812, 815.

See also:

*Re Grayling Realty Corporation* (77b), 74 Fed. (2d) 734.

*Converse v. Highway*, 107 Fed. (2d) 127.

*Smith v. Trust Co.*, 139 Fed. (2d) 733.

*Zelcznik v. Grand Riviera Theatre Co.*, 128 Fed. (2d) 533.

*Pen-Ken Gas & Oil Co. v. Gas Co.* (CCA 6), 137 Fed. (2d) 871.

*Thompson v. King* (CCA 8), 107 Fed. (2d) 307.

## C.

The judgment carried with it, as against collateral attack, a presumption of regularity, and was not dependent upon express fact findings, see cases supra "B".

Even an inconsistency between the findings and the judgment does not overcome the presumption of regularity inherent in judgments of Courts of general jurisdiction.

Milliken v. Meyer, 311 U. S. 457.

An adjudication in bankruptcy is not subject to collateral attack.

Fairbanks Steam Shovel Co. v. Wills, 240 U. S. 642-649, 60 L. Ed. 841-846.

And an order approving a debtor petition would appear to be analagous to an order of adjudication.

By the express provisions of Section 149 (11 USCA 549), a judgment approving a debtor petition is immune to attack on jurisdictional grounds even in the same Court after the time for appeal has elapsed, namely: thirty days after the petition is approved. Section 24 (a), 11 USCA 48.

In re Loewers, Gambrinus Brewery Co., 141 Fed. (2d) 747-9.

Mar-Tex Realization Co. v. Wolfson, 145 Fed. (2d) 360-362.

See also Dissenting Opinion of Judge Briggie in this case below (R. 101), 149 Fed. (2d) 548, 553.

## D.

**In any event fact findings have no place in a judgment order.**

See Rule 54, Rules of Federal Procedure, made applicable to bankruptcy by General Order 37 (11 USCA following Section 53).

Rule 54 is identical in substance with Equity Rule 71, which it supplanted, and with old Equity Rule 86, which was supplanted by Rule 71, under which it is held that fact findings have no place in a judgment.

United States v. Goldstein (CCA 8), 271 Fed. 838-845.

Linde Air Products Co. v. Dry Dock and Repair Co. (CCA 2), 246 Fed. 834-836.

Larkin Packer Co. v. Hinderleiter Tool Co. (CCA 10), 60 Fed. (2d) 491-494, citing authorities.

The incorporation of a large number of "findings" is "an especial barbarism."

Elliott Addressing Machine Co. v. Addressing Typewriter Stencil Co. (CCA 2), 31 Fed. (2d) 282.

The incorporation of "agreed facts" in a decree violated former Rule 71.

Kansas City Life Insurance Co. v. Shirk (CCA 10), 50 Fed. (2d) 1046.

Recitals of fact or reasons for the decree have no place in it.

Triplex Shoe Co. v. Cantor (DC Pa. 1939), 27 Fed. Supp. 295.

## E.

**Findings of fact under Rule 52, or under its predecessor, Equity Rule 70<sup>1/2</sup>, are solely for the convenience of an appellate court entertaining a direct appeal, and are not jurisdictional.**

*Tulsa City Lines v. Mains* (CCA 10), 107 Fed. (2d) 377-382.

*Citing Brown v. Metropolitan Life Insurance Company* (App. D. C.), 100 Fed. (2d) 98-99.

**Findings of fact are not even final on the entering of the judgment and are subject to correction by the same Court.**

**Federal Rules of Procedure, Rule 52.**

**Even an irreconcilable contradiction between findings of fact and the judgment does not impeach the judgment or render it subject to collateral attack.**

*Milliken v. Meyer*, 311 U. S. 457-462, 85 L. Ed. 278-283.

**"Findings of fact are not a jurisdictional requirement of appeal which this Court may not waive. Their purpose is to aid Appellate Courts in reviewing the decision below." *Hurwitz v. Hurwitz* (CADC), 136 Fed. (2d) 796-799.**

*Goodacre v. Panagopoulos* (CADC), 110 Fed. (2d) 716.

## II.

**Regardless of whether the Court below had jurisdiction to interpret the corporate reorganization provisions of the Chandler Act, it has in fact placed an interpretation thereon which is almost certain to thwart the purposes of Congress.**

## A.

**Congress intended to vest control in a single court.**

"There are cogent reasons why reorganization courts must have full dominion of property of debtor."

Swanstron—Chap. X, etc. (1939), p. 11.

Property must be assembled: Ample jurisdiction is provided without ancillary proceedings.

Report Jud. Comm. H. R., July 29, 1937.

Jurisdiction of reorganization courts is exclusive and supersessive to jurisdiction of all other courts.

Emil v. Hanley, 318 U. S. 515-522, 87 L. Ed. 954-956.

Throughout the United States as against any state or federal receiver in any other court.

In re Grayling R. Corp (CCA 2), 74 Fed. (2d) 734

Prior restrictions on jurisdiction of reorganizing courts, modified. Rules of Comity relaxed by Chandler Act.

Warder v. Brady (CCA 4), 115 Fed. (2d) 89.

Centralization of judicial administration in one court demanded; ordinary bankruptcy proceedings and equity receiverships are plainly superseded.

Reorganization court takes over property in possession of any trustee appointed by federal, state or foreign court.

"The term clearly includes a trustee in ordinary bankruptcy."

Finleiter—Prin. of Corp. Reorg. (1937), p. 139.

## B.

Congress did not intend to exclude ordinary bankruptcy proceedings from the sweeping and superseding jurisdiction of reorganizing courts.

"Sec. 111—The Court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property wherever located."

11 USCA 511.

"Sec. 113—Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed of a **prior pending bankruptcy \* \* \***" (Emphasis added.)

11 USCA 513.

"Sec. 148—Until otherwise ordered by the judge, an order approving a petition shall operate as a **stay of a prior pending bankruptcy \* \* \***" (Emphasis added.)

11 USCA 548.

An order approving a petition which has become final without an appeal is conclusive of the jurisdiction of the Court. Even on direct attack.

Sec. 149 (11 USCA 549).

And Court is vested with the powers of a court of the United States which has appointed a receiver of an insolvent debtor.

Sec. 115 (11 USCA 515).

## C.

There is an irreconcilable conflict between the purposes of ordinary bankruptcy and reorganization, and the two proceedings are mutually destructive and may not proceed simultaneously.

Ordinary bankruptcy contemplates prompt liquidation for the benefit of creditors.

Sec. 47 (a), 11 USCA 75a (1).

Reorganization contemplates conservation of a going business and preservation of good will.

Sec. 156, 11 USCA 556.

In the public interest and to avoid economic effect of liquidation.

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 84 L. Ed. 110.

The refusal of the Indiana Court to recognize the superseding jurisdiction of the Missouri Court has delayed the reorganization of the parent corporation as well as its subsidiaries for nearly two years.

The assertion of jurisdiction by the Indiana Court collaterally to adjudge the power of the Missouri Court and the conditions under which it might properly adjudge a debtor's petition has led to an absurd result not contemplated by Congress.

The Missouri order approving National's petition was entered April 19, 1944. It was not directly attacked or modified. It is conclusive on the jurisdiction of the Missouri Court:

"Sec. 149—An order, which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court."

11 USCA 549.



But that conclusive judgment is declared a nullity on "jurisdictional" grounds by the Indiana Court, whose jurisdiction was stayed automatically by the judgment.

As a result the judgment of the Missouri Court is void in Indiana; valid and exclusive every other place. The National is a "debtor" and a "bankrupt", is being liquidated in Indiana and reorganized in Missouri and elsewhere.

#### D.

Section 129 is merely a venue statute, and the venue or place the action is brought is not jurisdictional.

The National was a corporation, and no other petition for reorganization by or against it was pending in any other Court.

Sec. 106 (13), 11 USCA 506 (13).

Sec. 126, 11 USCA 526.

The petition was for reorganization.

Sec. 106 (9), 11 USCA 506 (9).

As a subsidiary it was expressly and unconditionally entitled to file in the same Court.

"Sec. 129—If a corporation be a subsidiary an original petition by or against it may be filed, either as provided in Section 128 of this Act or in the court which has approved the petition by or against the parent corporation." (Emphasis added.)

11 USCA 529.

The use of the adjective "original" does not alter the meaning of the noun "petition" which it modifies. "Peti-

tion" is defined. It is a "petition filed under this Chapter \* \* \* proposing that a plan of reorganization be effected."

Sec. 106 (9), 11 USCA 506 (9).

The primary purpose of the Act was to secure administration of the subsidiary in the same Court in which the parent proceeding was pending.

In re Realty Securities Corp., 55 Fed. Supp. 546.

### III.

#### Conclusion.

The conclusion of the Court below is not based on any sound principle, and does not purport to be based on any cited precedent. It is at best based on a distorted construction of the rules of res judicata, or violates them, and are a forced construction of the statutes, or an "inappropriate precept" of comity.

"The response of Congress to the need for corporate reorganization in a just and orderly manner must be productive of benefit if the courts interpret Chapter X free from any inappropriate precepts." (Emphasis added.)

Mr. Walter Chandler. Foreword to Swanstron: Corporation Reorganization under Federal Statutes (1938).

### ARGUMENT.

#### I.

The unambiguous judgment order of the Missouri Court was res judicata and binding on the Indiana Court and effectively stayed its power to sell National's assets. A court of original jurisdiction only, the Indiana Court was without power to review the Missouri judgment.

The theory of the Court below was, in effect, that because the Indiana Court had acquired jurisdiction over the property as a result of a pending ordinary bankruptcy proceeding, it had jurisdiction to review the order of the Missouri Court superseding that jurisdiction and reinterpret the provisions of Chapter X of the Chandler Act, which they deemed applicable to the case, and to deny or give effect to the unambiguous mandate of the judgment according to whether or not the Missouri judgment was supported by fact findings or by extrinsic evidence of facts, without proof of which, as the Court below construed the law, the Missouri Court was without "jurisdiction" to approve the subsidiary debtor petition or to stay the ordinary bankruptcy proceedings in the Indiana Court.

The petitioners submit that the purported "jurisdictional facts," the omission of which from the "findings" it is urged, destroys the effectiveness of the judgment collaterally are not jurisdictional at all, in the sense that their omission would render the judgment subject to collateral assault, or even on direct appeal. The ultimate fact was the conclusion that National was a fit corporation and entitled to petition in the Missouri Court. When or how it became a subsidiary are evidentiary facts. The conclusion of the Court below is based upon its own interpretation of the substantive law and its own conclusion as to the "right" of National to petition and the conditions under which the Missouri Court ought or ought not to have approved the subsidiary debtor petition. The interpretation of the substantive law of reorganization was never an issue in the Indiana Court; it was an issue in the Missouri Court. The question as to when or how the National became a subsidiary of Christopher was never an issue in the Indiana Court and the evidence or the weight and sufficiency of the evidence before the Missouri Court was never be-

fore the Indiana Court, or determinable by it or the Court below on review of the Indiana Court's decision. These questions were all questions for the Missouri Court and constituted the legal and factual basis of its judgment on the merits. The Court below simply reviewed the proceedings of the Missouri Court for error without a record.

The conclusion of the Court below is inconsistent with the status and dignity of the Missouri Court as a Court of the United States, and in excess of its own jurisdiction as a collateral court.

#### A.

#### **Constitution and jurisdiction of the respective courts.**

While both courts involved are District Courts of the United States and as designated courts of bankruptcy vested with such general jurisdiction as will enable them to exercise original jurisdiction under the Chandler Act; [Section 1a, 2a (11 USCA 1a, 11a) ], nevertheless such general jurisdiction may not be exercised in any case until invoked by a petition. And therein lies the distinction, disregarded by the Court below, between the jurisdiction of the Missouri Court and the jurisdiction of the Indiana Court and the reason why the Missouri Court had exclusive jurisdiction to interpret the law applicable to reorganization proceedings as an original proposition while the Indiana Court was bound by the rules of res judicata to accept the Missouri Court's interpretation. Both Courts in a broad sense had general jurisdiction as courts of bankruptcy under the Chandler Act, but their jurisdiction was not concurrent in the respective cases. The Indiana Court's jurisdiction had been invoked and it was proceeding in ordinary bankruptcy, but in the exercise of that jurisdic-

tion it was not authorized to review, control or supersede proceedings of bankruptcy courts, proceeding under Chapter X.

The Missouri Court's jurisdiction, on the contrary, had been invoked, and it was proceeding under Chapter X or the reorganization provisions of the Chandler Act upon a petition for corporate reorganization by National, an alleged subsidiary of Christopher, whose debtor petition had been approved by the Missouri Court.

Securities Ex. Com. v. U. S. Realty and Imp. Co.,  
310 U. S. 434-446, 84 L. Ed. 1293-1299.

Pennsylvania v. Williams, 294 U. S. 176-180, 79  
L. Ed. 841-845.

Ipsa facto upon the filing of a petition proposing that a "plan of reorganization be effected" [Sec. 106 (9)] the Missouri Court was vested with complete jurisdiction:

"Sec. 111. Where not inconsistent with the provisions of this chapter, the Court in which a petition is filed shall, for the purpose of this chapter, have exclusive jurisdiction of the debtor and its property wherever located."

11 USCA 511.

And included in that jurisdiction was enumerated the power to stay ordinary bankruptcy proceedings:

"Sec. 113. Prior to the approval of a petition the Judge may, upon cause shown, grant a temporary stay, until the petition is approved or dismissed, of a prior proceeding in bankruptcy \* \* \*" (11 USCA 513).

"Sec. 148. Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy \* \* \*"

11 USCA 548.

"Sec. 149. An order, which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court."

11 USCA 549.

The National was a corporation, and clearly came within the general class of parties authorized to invoke the jurisdiction of the Court. There was no other petition pending by or against it under Chapter X.

"Sec. 126. A corporation \* \* \* may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

11 USCA 526.

And the Court had general jurisdiction.

The venue provisions will be further discussed under title II, but it may be suggested here, as bearing upon the question of res judicata that a proper venue is not jurisdictional.

See comment "Principles of Corporate Reorganization (1937) Thomas K. Finleiter," p. 585, wherein it is said:

"Under the reorganization acts an improper venue should not be the basis for a semi-collateral attack. The provisions of the reorganization acts, unlike the ordinary bankruptcy provisions, do not phrase their venue requirements in terms of jurisdiction."

In the case of **Fairbanks Steam Shovel Co. v. Wills**, 240 U. S. 642-649, 60 L. Ed. 841-846, this Court ruled that an erroneous venue did not render an adjudication in bankruptcy subject to collateral attack.

The conclusion of the Court below that before the Missouri Court could have jurisdiction to approve National's petition that it must be established that National was a subsidiary on the date the parent's petition was filed has no foundation whatever in the Bankruptcy Law. Certainly it nowhere appears as a jurisdictional prerequisite and the ruling amounts to no more in any case than a reinterpretation of the substantive law by a collateral court. The Missouri Court did not declare National was not a subsidiary on December 27, 1943. The involuntary proceedings in Indiana were precipitated by the Missouri Court in the Christopher case enjoining proceedings against National in a State Court in Indiana which was before the involuntary proceedings were filed in Indiana (R. 16), and the theory that Christopher did not own National's stock on December 27, 1943, was formulated by Judge Sparks on purported evidence irregularly incorporated in his certificate by the Referee and on purported "facts" not communicated to the Court below by the record. The theory was not concurred in by any other judge. The concurrence of the judges was on the omission of the Missouri Court expressly to find that National was a subsidiary on December 27th, and was not on the conclusion of Judge Sparks that National was not a subsidiary on December 27, 1943.

B. -

The judgment of the Missouri Court was *res judicata* and, with all its implications, conclusive against collateral attack in the Indiana Court.

A judgment of a United States Court does not depend for its effect collaterally upon jurisdiction *de jure*, or



even upon the actual validity of the statute upon which the Court assumes to act or upon the precision with which the Court interprets the law or applies the facts, but upon the principles of *res judicata* and the impregnable of such judgments to collateral assault.

This Court, in the case of **Chicot County Drainage District v. Baxter State Bank**, 308 U. S. 371-377, 84 L. Ed. 329-334, ruled that a judgment of a reorganization court, rendered under a statute which was subsequently declared unconstitutional by this Court, might not be questioned in a later proceeding by a creditor whose rights were ostensibly foreclosed by the judgment.

The facts in the **Chicot** case were that a bankruptcy court had received and approved and subsequently reorganized an alleged municipal corporation under the first municipal reorganization act. In the exercise of its ostensible jurisdiction it cancelled certain bonds, among others those owned by the Baxter State Bank. The bank never at any time appeared to the action, did not file a claim on its bonds and did not participate in the plan and, of course, was never served with process. After the Act was held unconstitutional by this Court in another proceeding (*Ashton v. Cameron, etc.*, 298 U. S. 513, 80 L. Ed. 1309), the Baxter State Bank brought suit on its bonds, which it had retained. The suit was brought on the theory that the Act, under which the Court had assumed jurisdiction to cancel the bonds, being unconstitutional and void, the proceedings were a nullity. This Court, however, ruled the case, not on the validity of the Act and jurisdiction *de jure*, which obviously could not be maintained, but upon settled principles of *res judicata*. The Court said:

"The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But nonetheless they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statutes under which they are asked to act. And determinations of such questions, while open to direct review, may not be assailed collaterally." (1. c. 376.)

"They," United States Courts, "are all of limited jurisdiction; but they are not, on that account, inferior courts, in the technical sense of these words, whose judgments, taken alone, are to be disregarded. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous and may, upon writ of error or appeal, be reversed for that cause. But they are not absolute nullities." (Citing *American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. Ed. 231.) "This rule applies equally to decrees in the District Court sitting in bankruptcy; that is purporting to act under a statute of Congress passed in the exercise of the bankruptcy power. The Court has the authority to pass upon its own jurisdiction and its decree, sustaining jurisdiction against attack, while open to direct review, is *res judicata* in a collateral proceeding. (Citing *Stoll v. Gottlieb*, 305 U. S. 165-171-172, 83 L. Ed. 104, 108, 109.)"

A like ruling was made by this Court in **Kalb v. Feuerstein**, 308 U. S. 433-439, 84 L. Ed. 370, 375, in which case this Court considered like provisions of the Frazier-Lemke Act. The Court said:

"The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy

law. If Congress has vested in the bankruptcy courts exclusive jurisdiction of farmer-debtors and their property and has by its act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its act is the supreme law of the land which all courts, state and federal, must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone."

The Court continued and said that the Act provided:

"The filing of a petition \* \* \* shall immediately subject the farmer and all of his property, wherever located \* \* \* to the exclusive jurisdiction of the court, including \* \* \* the right of the equity of redemption where the period of redemption has not expired."

Compare the language just quoted from the Kalb case with the following sections of Chapter X of the Chandler Act:

"Section 111—Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction over the debtor and his property wherever located."

11 USCA 511.

It was clearly not the purpose of Congress to exclude from the reorganizing court property in the possession of ordinary courts of bankruptcy:

"Section 113—Prior to the approval of a petition, the Judge may, upon cause shown, grant a temporary stay until the petition is approved or dismissed \* \* \* of a prior pending bankruptcy."

11 USCA 513.

"Section 148—Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy. \* \* \*"

11 USCA 548.

"Section 149—An order which has become final approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court."

11 USCA 549.

The several circuits have likewise ruled:

"If one federal court failed to give effect to the judgment of another federal court, the Supreme Court of the United States, as head of the judicial system of the United States, would compel it to do so because 'they are many members yet but one body'."

**Caterpillar Tractor Co. v. International Harvester Co. (CCA 3), 120 Fed. (2d) 82-86.**

"A court has power to determine whether or not it has jurisdiction of the subject matter of a suit and of the parties thereto. As Mr. Justice Brandeis remarked in *American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. Ed. 231, 'the principles of res judicata apply to questions of jurisdiction as well as to other issues'."

**Rippberger v. A. C. Allyn Co. (CCA 2), 113 Fed. (2d) 332, 333.**

"Whether the suit was or was not one of which the Court has jurisdiction, there was certainly power in the Court to determine the question of jurisdiction; and even if there was lack of jurisdiction, it is well settled that a judgment based on an erroneous assumption of jurisdiction would not have been void or subject to collateral attack."

**Nye v. U. S. (CCA 4), 137 Fed. (2d) 73-77.**

A like ruling was made in the case of **Mar-Tex Realization Corporation v. Wolfson (CCA 2), 145 Fed. (2d) 360, 362**, with an extensive citation of authorities.

The Seventh Circuit itself, in an opinion by Judge Lindley, concurred in by Judges Sparks and Major (the same two Judges who delivered the majority opinions in this case below), ruled in a 77b proceeding that reorganization courts have a jurisdiction that is "**paramount and exclusive**" and "cannot be affected by proceedings in other courts, whether state or federal," and that the only way of correcting error of the court taking jurisdiction of a reorganization proceeding is by appeal in the same action.

**Re Park Beach Hotel Bldg. Corporation (77B)  
(CCA 7), 96 Fed. (2d) 886-891.**

**The judgment carried with it, as against collateral attack a presumption of regularity and was not dependent upon express fact findings.**

Clearly the majority Judges confirmed the power of the Indiana Referee and Judge and the Judges of the Seventh Circuit to review collaterally the legal and factual basis of the judgment of the Missouri Court and assumed to themselves power as a reviewing court to review in a collateral proceeding the final judgment of a United States Court beyond their territorial jurisdiction.

As pointed out by Judge Briggie in his dissenting opinion (R. 101-102), the question of how the stock of National was owned was never material to the ordinary proceeding in Indiana and only became material when the subsidiary debtor proceeding was filed in Missouri and may we reiterate that the proper construction of Chapter X never became material to the ordinary pro-

ceedings in Indiana. The jurisdiction to interpret the law and to determine whether or not the National was a fit subject for reorganization in the Missouri Court was for the Missouri Court and its error, if any, in determining that question was subject only to direct attack or appeal.

The ruling of the Court is in direct conflict with the rule announced and confirmed by the Supreme Court in the case of:

**Milliken v. Meyer, 311 U. S. 457, 85 L. Ed. 278.**

wherein the Court said that while jurisdiction over the person or the subject matter is a subject of inquiry in a collateral proceeding, that:

**"the constitution precludes any inquiry into \* \* \* the validity of the legal principles on which the judgment is based (citing authorities). Whatever mistakes of law may underlie the judgment (citing authorities) it is conclusive as to all the media concludendi,"**  
l. c. 462.

And in the same case this Court ruled that even an irreconcilable contradiction between the findings and the decree did not impeach or render subject to collateral attack the judgment of a court of record. This Court said:

**"But if the judgment on its face appears to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself." (Citing authorities.) "In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." (Citing authorities.)**

**"Accordingly \* \* \* the holding of the Colorado Supreme Court that the judgment was void because of an inconsistency between the findings and the decree was not warranted." (l. c. 462-463.)**

We have pointed out that United States Courts are of the dignity of courts of general jurisdiction or at least are not to be considered courts of inferior jurisdiction when the judgments are assailed collaterally.

**Chicot County Drainage District v. Baxter, 308 U. S. 371.**

By the express provisions of Section 149 (11 USCA 549), a judgment approving a debtor petition is conclusive of the jurisdiction of the Court, even as against direct attack after the time for appeal has passed.

**In re Loewers Gambrinus Brewery Co., 141 Fed. (2d) 747-9.**

**Mar-Tex Realization Co. v. Wolfson, 145 Fed. (2d) 360-2.**

The conclusion that an unambiguous judgment depends for its effect collaterally upon express findings indicates a total misconception on the part of the Court below of the character and necessary contents of a judgment and of the proper function of fact findings.

#### D.

**In any event fact findings are not essential to or even properly a part of a judgment,**

The form of judgments is prescribed by Rule 54 of the Rules of Federal Procedure and follows closely former Equity Rule 71, which was itself a re-enactment of Rule 86 of the old equity rules promulgated March 2, 1842.



Rule 54 is made applicable to bankruptcy proceedings by General Order 37 (11 USCA following Section 53).

Rule 54 defines a judgment as a decree or order from which an appeal lies.

An appeal is authorized by Section 24a (11 USCA 48) from any order, interlocutory or final, in bankruptcy. And an order approving a debtor petition is an appealable order.

Rule 54 of the Federal Rules of Procedure provides:

"A judgment shall not contain a recital of pleadings, the report of a master or the record of prior proceedings."

As stated, Rule 54 closely follows former Equity Rule 71, which reads as follows:

"In drawing up decrees and orders, neither the bill nor answer, nor other pleadings nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: 'This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz: (here insert the decree or order)'".

In the case of **Linde Air Products Company v. Morse Dry Dock and Repair Co.** (CCA 2-1917), 246 Fed. 834-836, the Court said:

"The statement in a decree of any facts, proved or unproved, has altogether fallen into disuse, as unnecessary, except in matters of contempt, or in special

cases, or where it may be considered exceptional. Thus Rule 71 is but declaratory of good modern practice, and may be supplemented thus: The ordinary directing or mandatory part of a decree shall merely 'point out with precision what is to be done, when, where, and by whom and to or for whom'."

**In United States v. Goldstein** (CCA 8, 1921), 271 Fed. 838-845, Judge Trieber said:

"Findings of fact have no place in a decree in a National Court. Rule 71 of the present Equity Rules, a re-enactment of Rule 86 of the former Equity Rules promulgated March 2, 1842, prescribed the form for a decree, and, although it does not in express terms prohibit the inclusion of findings of fact in the decree, it does so by necessary implication. Only if it is necessary to make the decree more clear and specific is it proper to include findings of fact in the decree."

**In Larkin Packer Co. v. Hinderleiter Tool Co.** (CCA 10, 1932), 60 Fed. (2d) 491, 494, Judge McDermott said, citing numerous authorities, including the authorities hereinbefore cited in this Brief:

"But findings of fact are not part of a decree \* \* \* The decree should contain only what the Court decrees to be done or not to be done. The decree need only 'point out with precision what is to be done, when, where and by whom and to or from whom' (citing authority). Findings of fact have no place in a decree in a National Court."

**In Elliott Addressing Machine Co. v. Addressing Typewriter Stencil Corporation** (CCA 2, 1929), the Court referred to the inclusion of a page and a half of so-called "findings" in an order pendente lite as an "especial barbarism."

In **Kansas City Life Insurance Co. v. Shirk** (CCA 10, 1931), 50 Fed. (2d) 1046, the Court ruled that the incorporation of agreed facts in a decree constituted a violation of former Rule 71.

Judge Dickinson in **Triplex Shoe Co. v. Cantor** (DC Pa. 1939), 27 Fed. Supp. 259, said:

"A decree should simply be a decree. Recitals, findings of fact, conclusions of law, nor the reasons for the decree have a proper place in it."

Since fact findings have no proper place in a decree, and the Court below concluded that the omission of sufficient fact findings to support the judgment rendered it ineffective collaterally, the conclusion presents the paradox that a judgment order, which in compliance with the rules of procedure omits fact findings, is of no effect collaterally. In order for a judgment to be effective collaterally a draftsman would, in violation of the rules, be compelled to incorporate fact findings in the judgment order. As a result a judgment would have to be subject to criticism locally in order to be effective collaterally.

#### E.

**Findings of fact under Rule 52, or under its predecessor, Equity 70½, are solely for the convenience of an appellate court entertaining a direct appeal, and are not jurisdictional.**

**Tulsa City Lines v. Mains** (CCA 10), 107 Fed. (2d) 377-382.

Citing **Brown v. Metropolitan Life Insurance Co.** (App. D. C.), 100 Fed. (2d) 98-99.

Findings of fact are not even final on the entering of the judgment and are subject to correction by the same Court.

Rule 52, Federal Rules of Procedure, which would imply, according to the reasoning below that a judgment continued in suspense until the fact findings were settled.

Even an irreconcilable contradiction between findings of fact and the judgment does not impeach the judgment or render it subject to collateral attack.

*Milliken v. Meyer*, 311 U. S. 457-462, 35 L. Ed. 278-283.

Contrary to the ruling of the Court below, the Court of Appeals for the District of Columbia, has expressly ruled that findings of fact are not jurisdictional:

"Findings of fact are not a jurisdictional requirement of appeal which this Court may not waive. Their purpose is to aid Appellate Courts in reviewing the decision below."

*Hurwitz v. Hurwitz* (CADC), 136 Fed. (2d) 796-799.  
*Goodacre v. Panagopoulos* (CADC), 110 Fed. (2d) 716.

In any event the findings of fact required by Rule 52 are ultimate facts, not evidentiary facts to support the ultimate facts.

*Brown Paper Mills Co. v. Irvin* (CCA 8), 134 Fed. (2d) 337.

The ultimate fact involved in the Missouri judgment was whether or not National was a fit and proper petitioner and entitled to reorganization with Christopher as a subsidiary. The answer was in the affirmative and was expressed in the decree in unnecessary detail and was implied therein as well. The judgment would have been sufficient had it merely adjudged that the petition be approved and appointed a trustee.

We submit that the Court below by a majority of the judges simply reviewed or undertook to review the legal and factual basis of the Missouri Court's judgment, precisely as if on direct and timely appeal contrary to settled rules of law.

Being without the evidence heard in the Missouri Court, and without special findings of fact and conclusions of law, required of nisi prius judges solely for the convenience of the judges on direct appeal, the Court below was unable to review the law or facts with certainty. In the absence of a transcript the Referee and subsequently one of the judges below undertook to reconstruct the proceedings in the Missouri Court, de hors the record, but did not secure the concurrence of any other judge in that respect. Unable in fact to review the conclusions of fact and law of the Missouri Court because no transcript of the evidence or findings of fact satisfactory to the Court were incorporated in the judgment, and unable to remand the case to the Missouri Court for proper findings, the Court, by a majority of judges below, cut the Gordian knot by deciding that failure to make findings was jurisdictional.

We submit that the status of the Missouri Court, as a Court of the United States, with statutory authority to stay proceedings in ordinary bankruptcy under the cases cited precluded any inquiry by the Court below into:

"The validity of the legal principles involved on which the judgment is based \* \* \*. Whatever mistakes of law may underlie the judgment \* \* \* it is conclusive as to all the **media concludendi**.

Milliken v. Meyer, 311 U. S. 457, 85 L. Ed. 278.

And accordingly we submit that the judgment of the Court below and of the lower Court ought to be reversed.

## II.

Regardless of whether the Court below had jurisdiction to interpret the corporate reorganization provisions of the Chandler Act, it has in fact placed an interpretation thereon which is almost certain to thwart the purpose of Congress.

## A.

Congress intended to vest control in a single court.

Undoubtedly the purpose of Congress was to centralize in a single court complete and sweeping jurisdiction over debtor assets, exclusive of all other courts, state or federal, and to proceed expeditiously and economically to determine if rehabilitation could be effected. As a means to this end, Congress abandoned ancillary proceedings and vested the reorganizing court with direct control of property in the hands of officers and trustees of other courts.

As stated by Mr. Luther D. Swanstron, in his book, "Chapter X, Corporation Reorganization Under Federal Statutes" (1938):

"There are cogent reasons why the reorganization courts must have full dominion of property of a debtor under reorganization. It cannot reorganize property operated outside of its jurisdiction and without knowledge of its condition or the cost of its operation, or the possible net returns to be expected. The bankruptcy court cannot, without losing its paramountcy, become a co-tenant, it cannot effectively hold an undivided interest with some other court or person in the debtor, its property and affairs, and at the same time reorganize the debtor in its entirety." (p. 11.)

The author cited *Campbell v. Allegheny Corporation*, 75 Fed. (2d) 947, to the effect:

"Its purpose should be forwarded by a fair and liberal construction of its provisions, not thwarted by any narrow, technical interpretation, and certainly not by reading into its language conditions and limitations which the lawmakers themselves did not see fit to express."

"One of the first moves in the administration of an estate is to gather together, by possession or control, all the assets of the debtor into one place for administration to make them subject to reorganization. Ample jurisdiction is provided it without ancillary proceedings (Section 186, 111, 187, 257) and stay orders may be issued to protect the debtor and its property wherever located. Turnover orders may be required."

Report of Committee on the Judiciary to the House, July 29, 1937.

"The keynote of administration is the preservation and conservation of the debtor's business, good will and other assets, and the continuation of its business. These are the underlying principles in the cases. This is the public policy supporting Section 77b and Chapter X, with their provisions extending the jurisdiction of the Court to embrace the complete control of the debtor's assets and the strengthening of the stay or injunctive provisions of the statute."

Swanstron, Chapter X (1938), p. 105.

This Court has said:

"The jurisdiction of reorganization courts is exclusive and supersessive of the jurisdiction of all other courts to an extent not conferred upon courts of bankruptcy in ordinary proceedings."

*Emil v. Hanley*, 313 U. S. 515, 522, 87 L. Ed. 954-956.



"By a wide sweep of power exclusive jurisdiction of all property wherever located is given with the power to stay or enjoin 'any judicial proceeding to enforce any lien on the estate', as well as the power to stay not only the commencement, but also the continuation of suits against the debtor."

"The Court thus acquiring jurisdiction over the property of the debtor does so throughout the United States as against any state or federal receiver theretofore appointed in any other proceeding."

In re Grayling Realty Corporation, 74 Fed. (2d) 734.

In the case of *Warder v. Brady* (CCA 4), 115 Fed. (2d) 89, the Court pointed out a number of previous limitations on the power of bankruptcy courts which have been modified by the Chandler Act. Referring to the former necessity for applications to other courts and of going through a complicated procedure to acquire possession of assets, in custody of other courts, theretofore required by the rules of comity, the Court said:

"We are concerned in the pending case, however, with the Act of 1938, which was passed for the very purpose of modifying these restrictions when engaged in a reorganization proceeding under Chapter X of the statute."

"Moreover, the rule of comity is relaxed with respect to the proceedings under Chapter X."

Mr. Thomas K. Finleiter (1937) in his "Principles of Corporate Reorganization" said, referring to 77b and the statements are applicable to Chapter X, which liberalized the provisions of 77b:

"Centralization of the judicial administration of the assets in one reorganization court is demanded."

"The reorganization acts accordingly have two drastic provisions to effect these ends."

“Ordinary bankruptcy proceedings and equity receiverships are plainly superseded \* \* \*”

“The reorganization court by sub-paragraph (i) also takes over any property in the possession of any ‘trustee’ \* \* \* appointed by a federal, state or foreign court. The term clearly includes a trustee in ordinary bankruptcy. Trustees may also be appointed by state courts and presumably any court officer who acquires title to the property which is the subject of the proceeding would be regarded as a trustee, as opposed to a receiver who obtains only possession” (p. 139).

#### B.

**Congress did not intend for pending bankruptcy proceedings to interfere with the sweeping control of reorganizing courts.**

“Sec. 111—The Court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property wherever located.”

11 USCA 511.

“Sec. 113—Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed of a **prior pending bankruptcy** \* \* \*”

11 USCA 513.

“Sec. 148—Until otherwise ordered by the judge an order approving a petition shall operate as a **stay of a prior pending bankruptcy** \* \* \*”

11 USCA 548.

And to emphasize the purpose to sweep aside technicalities based on jurisdictional grounds, the Act provides that an order approving a petition for reorganization which has become final without an appeal is made con-

clusive not only as to the propriety generally of the petition and order, but of the jurisdiction of the court itself.

**Section 149 (11 USCA 549).**

Upon approving a petition the Court is further vested with the powers of a court of the United States which has appointed a receiver in equity of the property of a debtor on the ground of insolvency or inability to meet its debts as they accrue.

**Section 115 (11 USCA 515).**

**C.**

**There is an irreconcilable conflict between the purposes of ordinary bankruptcy and of reorganization, and the two proceedings are mutually destructive and may not proceed simultaneously.**

In ordinary bankruptcy the proceedings are largely controlled by the creditors and in the interest of creditors [11 USCA 91 (c)] and the trustee is specifically enjoined to:

**"collect and reduce to money the property and assets for which they are trustees, under the direction of the court and close up the estate as expeditiously as is consistent with the best interest of the parties in interest." [Section 47 (a) 1, 11 USCA 75 (a) 1.]**

While under Chapter X the reorganizing court is authorized to conserve the assets in inquiry and even to return them to the debtor pending reorganization and operate the business. (Section 156, 11 USCA 556.)

Chapter X was enacted in the public interest to avoid the drastic deflationary effect of liquidation upon the public economy as a whole.

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 84 L. Ed. 110.

As Mr. Swanstron stated (*supra*), a reorganization court cannot become a co-tenant with other courts and at the same time effectively reorganize a corporation. If the other court is a court in ordinary bankruptcy, the situation is impossible, and is best illustrated in the instant case.

Nearly two years ago National's debtor petition was approved by the Missouri Court in which the proceeding of its parent was pending. But the very next day the court in ordinary bankruptcy and its officers, hastily sold or attempted to sell the major portion of the subsidiary assets. As a result the reorganization of the parent, two partnership appendages and the corporate subsidiary National has been delayed.

The Indiana referee continued the hearing on the confirmation of sale and his trustee and counsel "investigated" the Missouri proceeding (R. 43) but for an unexplained reason omitted to appear and challenge directly the jurisdiction of the Missouri Court or the propriety of the order approving National's petition. Had they done so, not only the question of jurisdiction, but the question of the merits of National's petition could have been settled in a few months; as it is, we are confronted with an absurd situation. The jurisdiction of the Missouri Court to approve the petition has, by lapse of time, become conclusively established:

"Sec. 149—An order, which has become final, approving a petition filed under this chapter, shall be a conclusive determination of the jurisdiction of the Court."

11 USCA 549.

But the Missouri Court was without jurisdiction to stay the proceedings in ordinary bankruptcy, or so the Court below decided, so, the Indiana Court must liquidate National and the Missouri Court must rehabilitate it. Such a result was never contemplated by Congress and could not have resulted at all except for the fact the court in ordinary bankruptcy failed to recognize the fact that its jurisdiction in the first place was by act of Congress, and Congress has equal power to recapture or take it away, and did so by granting reorganizing courts a jurisdiction supersessive to the jurisdiction of all other courts. But the Court below, and the Indiana Court was unable to discard "inappropriate precepts" (Mr. Walter Chandler) of comity and of the dignity of the Indiana Court, and insisted on its right to review the Missouri judgment.

D.

Section 129 is merely a venue statute and venue or place the action may be brought is not jurisdictional.

There is nothing in the venue sections indicating that they were intended to restrict the jurisdiction of the Court.

Section 106 (13). "Subsidiary shall mean a corporation \* \* \* the majority of whose stock having power to vote \* \* \* is owned \* \* \* by another parent corporation, a petition by or against which has been approved."

11 USCA 506 (13).

**Section 106 (9).** "Petition shall mean a petition filed under this Chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected."

**11 USCA 506 (9).**

**Section 126 (Corporations).** "\* \* \* may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

**11 USCA 526.**

**Section 129.** "If a corporation be a subsidiary an original petition by or against it may be filed either as provided in Section 128 of this Act or in the Court which has approved the petition by or against its parent corporation."

**11 USCA 529.**

It will be noticed that Section 129 without qualification gives to a subsidiary who desires to file, or to anyone who desires to file a debtor petition against it, the unconditional option to file "in the Court which has approved the petition by or against its parent corporation."

Respondent and one of the Judges below indulged in a species of dialectics centering on the word "original" in Section 129.

The statute defines a "petition" as a petition "filed under this chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected" (Sec. 106-9) (11 USC 506-9).

Having defined "petition" as a Chapter X petition, Section 129 says an "original" petition may, at the option of the party, be filed in the court which has approved

the parent petition. Although we have used the same noun, "petition," respondent says it loses its significance or gains a new significance when it is preceded by an adjective.

Original means: first or prime—the first of its kind. Original petition would in common language mean the first or prime petition filed under Chapter X, "proposing that a plan of reorganization be effected" (Sec. 106-9).

The language and words of the section should be taken in their common meaning and not tortured into a limitation on the jurisdiction of the Court calculated to make the legislation ineffective.

"Its purpose should be forwarded by a fair and liberal construction of its provisions, not thwarted by any narrow, technical interpretation, and certainly not by reading into its language conditions and limitations which the lawmakers themselves would not see fit to express."

Campbell v. Allegheny Co., 75 Fed. (2d) 947.

It is not at all certain that even a sole corporation must at all events file in a pending proceeding if one is pending, but the discussion of that question is not necessary to a consideration of this case.

A subsidiary corporation, by the very nature of its relationship to its parent corporation and other subsidiaries of the same parent, occupies a different position with respect to reorganization from that occupied by sole corporations and in many instances the parent corporation cannot be effectively reorganized without simultaneously controlling the subsidiary or its assets and Congress, in enacting old Section 77b, and the general revision thereof as incorporated in Chapter X, was con-



cerned with the effective reorganization of distressed corporations and not with perpetuating the jurisdiction of courts in particular cases over the assets of such distressed corporations. And, Congress considering the desirability if not the necessity of a common reorganization of parent corporations with their subsidiaries, struck down all prior conceptions of comity and authorized a subsidiary, either voluntarily on its own petition, or involuntarily on the petition of other interested parties, to be brought within the jurisdiction of the court reorganizing its parent without regard to pending litigations

As provided in Section 129 (11 USCA 529), a "subsidiary" (corporation whose parent is in reorganization) may petition as provided in Section 128 of the Act, which would in effect be a separate reorganization, since there is no provision in the statute by which a parent corporation may be brought into a proceeding for the reorganization of its subsidiary. Under the optional venue of Section 129, and regardless of its domicile, or the location of its assets, and regardless of pending proceedings not under Chapter X, the subsidiary is authorized to file its petition for reorganization in the court which has approved the petition by or against its parent.

The subsidiary may petition either by intervention in the parent proceeding, as in this case, or by a separate petition in the same court. It would appear that the primary purpose of the Act was to secure administration of its assets by the same Judge who was administering the estate of the parent and that it was immaterial whether that result was attained by intervention or by separate petition in the same court.

**In re Realty Associates Securities Corporation, 55  
Fed. Supp. 546.**

In the report of the Senate Committee on the Judiciary, May 27, 1938, at page 25, it is stated:

**"Section 129 permits an exception to the regular venue requirements in situations where the Court which already has jurisdiction of a parent corporation should also have before it any proceedings for the reorganization of its subsidiary or subsidiaries. Petitions by or against subsidiaries may be filed with the Court in which the petition involving the parent corporation has been approved."**

There can be no question but that Section 129, relating to where subsidiary petitions may be filed is a mere venue statute.

Judge Sparks, the only concurring judge who discussed the statutes, referred to Section 129, as a venue statute. He said (emphasis added):

**"Sub-Chapter IV of Chapter X deals with the petitions for reorganizations, including the right to file and the venue. They should be construed together" (R. 98).**

It can hardly be questioned that the **right to file** goes to the merits and not to the jurisdiction of the Court. It is for the determination of that question that jurisdiction is invoked. While venue may be jurisdictional, it is not so considered in bankruptcy proceedings.

Mr. Thomas K. Finleiter in his book **Principles of Corporate Reorganization** (1937) beginning at page 585, discusses the effect of an error of venue, and points out that even in ordinary bankruptcy proceedings an adjudication cannot be collaterally assailed for an error in the place of bringing the action (p. 587), although in ordinary bankruptcy the venue appears to be phrased in terms of jurisdiction:

"Sec. 2a \* \* \* Courts of bankruptcy are invested (with such jurisdiction) as will enable them to \* \* \* (1) adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdiction for the preceding six months \* \* \*."

Notwithstanding the phrasing of the venue requirements in ordinary bankruptcy this Court in the case of **Fairbanks Steam Shovel Co. v. Wills**, 240 U. S. 642-649, 60 L. Ed. 841-846, ruled that "an adjudication in bankruptcy cannot be collaterally attacked" in a case where it was urged that the adjudication was had at the wrong venue.

Mr. Finleiter continues:

"Under the reorganization acts an improper venue should not be the basis for a semi-collateral attack." (N. B. An attack in the same Court after time for direct attack has elapsed).

"The provisions of the reorganization acts, unlike the ordinary bankruptcy provisions, do not phrase their venue requirements in terms of jurisdiction."

And the statement is accurate. As applied to reorganization the statutes as to jurisdiction are as follows:

"Sec. 2a (11 USCA 11) Courts of bankruptcy \* \* \* are \* \* \* invested \* \* \* with such jurisdiction \* \* \* as will enable them to exercise original jurisdiction in proceedings under this Act \* \* \* (9). Confirm or reject arrangements or plans proposed under this Act \* \* \*."

"Sec. 126. A corporation \* \* \* may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

11 USCA 526.

"Sec. 106 (9) 'Petition' shall mean a petition filed under this Chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected.

11 USCA 506-9.

"Sec. 106 (13). 'Subsidiary' shall mean a corporation \* \* \* the majority of whose stock having power to vote \* \* \* is owned, directly or indirectly through an intervening corporation or other medium, by another parent corporation, a petition by or against which has been approved."

11 USCA 506-13.

"Sec. 129. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in Section 128 of this Act, or in the Court which has approved the petition by or against its parent corporation."

11 USCA 529.

"Sec. 111. Where not inconsistent with the provisions of this Chapter, the Court in which a petition is filed shall, for the purposes of this Chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

11 USCA 511.

These follow, Section 113, 114, 115, 116, and numerous other provisions giving the Court extraordinary and exclusive powers, inconsistent with the continued jurisdiction of a Court in ordinary bankruptcy, including an automatic stay of an ordinary bankruptcy and finally:

"Section 149. An order, which has become final, approving a petition under this chapter shall be a conclusive determination of the jurisdiction of the Court."

Clearly a proper venue is not jurisdictional and an erroneous venue does not render the judgment approving the petition a nullity and subject to collateral attack.

## CONCLUSION.

Petitioners respectfully submit that the Court below, regardless of the theory on which it affirmed the power of the Indiana Court to sell the assets of National, in the ordinary bankruptcy proceeding after the Missouri Court had superseded that proceeding by taking jurisdiction of National and its assets in a reorganization proceeding is erroneous and in conflict with the law and the public interest.

### I.

It denies full faith and credit on collateral attack to an unambiguous judgment of a Court of the United States, rendered in a cause wherein it had jurisdiction of the subject matter and of the parties, the judgment being within the scope of the general powers conferred on the Court.

### II.

Contrary to the intendment of Chapter X of the Chandler Act, the judgment below subordinates the sweeping and exclusive jurisdiction of reorganization courts over debtors and their assets, and over proceedings in other courts to the judicial judgment and discretion of other courts.

It is submitted that the ruling below ought to be reversed; the order confirming the sale set aside, and the Indiana Court directed to stay all proceedings pending further orders of the Missouri Court, in accordance with

Section 148 (11 USCA 548) and that the respondent submit himself and the property in his custody to the orders of the Missouri Court.

Respectfully submitted, •

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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1945

No. 418

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES OF CHRISTOPHER ENGINEERING COMPANY, AND NATIONAL AIRCRAFT CORPORATION, Petitioner,

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION

No. 419

NATIONAL AIRCRAFT CORPORATION, Petitioner,

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

MOTION TO SUPPRESS.

Come now the petitioners and show to the Court that respondent, in violation of the rules of this Court, and in violation of the Constitution of this Court as a court of review, has incorporated in his Brief as "Appendix B" (pp. 55-92, inclusive) numerous exhibits which are

not included in the complete transcript of the record of the court below as certified by the Clerk of the court below and on the basis of such purported exhibits has submitted numerous arguments calculated to influence the conclusions of this Court on the merit of petitioners cause.

And petitioners show to the Court that the said exhibits were not at any time offered in evidence before the Referee in the lower court or before the Judge on review of the Referee's order involved in this cause and that these petitioners have never at any time been accorded a hearing on the competency or relevancy of said exhibits or their materiality to the issues involved in this case and have not at any time been afforded an opportunity to contest or dispute the competency or legal effect of said exhibits or to rebut or explain the same.

As a result of all of which these petitioners show to the Court that the ex parte attempt of the respondent to supplement the record constitutes a departure from the accepted and usual course of judicial procedure and operates to deprive these petitioners of due process of law against the guaranties of the Fifth Amendment to the Constitution of the United States.

That insofar as respondent has incorporated said purported facts and evidence contained in said exhibits in his argument, he has violated Rule 27 of the rules of this Court in that, being unable to appropriately page such references to the printed Record, he has paged them to the purported appendix of his Brief or on occasion availed himself of purported inferences therefrom without reference of any kind.

Wherefore, the petitioners move the Court to suppress and disregard the matters and things contained in said "Appendix B" and the references thereto wherever found in respondent's Brief.

JEROME F. DUGGAN, TRUSTEE, etc.  
and  
NATIONAL AIRCRAFT CORPORATION,  
Petitioners.

By

Their Attorney

### **SUMMARY OF THE ARGUMENT.**

In our reply argument we have followed the paragraph headings of the respondent's Brief with references to the pages of the respondent's Brief to which the argument and comment is directed, followed by a discussion of the particular cases cited by the respondent. So treated, our reply argument cannot readily be summarized except by following the summary contained in respondent's Brief, which is already before the Court. For this reason we have omitted a formal summary.

### **PETITIONERS' ARGUMENT AND COMMENT ON RESPONDENT'S BRIEF.**

(Paraphrasing and paging is to Respondent's Brief)

#### **Foreword.**

This cause was tried before the Referee below on the Trustee's Report of Sale (R. 39). The Report recited that before the sale commenced the Trustee and his auctioneer were served with a copy of the judgment order of the Missouri Court approving the subsidiary petition of

National Aircraft Corporation for a reorganization in connection with the reorganization of its parent, Christopher Engineering Company (R. 41). A certified copy of the judgment order was attached to the Trustee's Report as Exhibit A (R. 41).

The hearing on the motion to confirm the sale was had on the report and an inquiry as to the adequacy of the sale and consideration.

No inquiry or hearing was had on whether or not the National was a subsidiary of Christopher or on the probability of successful reorganization, except as that question was determined by the judgment order of the Missouri Court. No other evidence bearing on the issues in this case was offered before the Referee and the sale was confirmed upon the Referee's conclusion that the respondent held title to the assets as trustee in bankruptcy; had possession of the property; and that no application for the release of the assets had been filed in the Indiana Court. From these facts the Referee concluded that the sale should be confirmed on ordinary considerations.

The entire proceeding is set out on pages 3 and 4 of the Record. It contains no finding as to the probability of reorganization or as to the stock ownership or subsidiary relationship of National for the very good reason that these issues were not tried on extraneous evidence.

On that order and record we applied to the Circuit Court of Appeals for the Seventh Circuit for prohibition, as mentioned by the respondent on page 8 of his Brief.

Following the same practice that he has followed in this Court and in the Court below, the respondent



gathered up various unrelated documents from the files of the Court in St. Louis and incorporated them in his Brief in opposition to the petition for prohibition without giving us any opportunity to be heard on the documents, to rebut, deny or explain them.

At some time subsequent to his findings and order dated May 3, 1944 (Record, pp. 3 and 4), which are summarized in the preceding paragraph, and after the petitioners had filed notice of appeal, assigning as grounds therefor that the Referee was without jurisdiction to enter the order because his jurisdiction over the assets had been superseded and vested in the Missouri Court and Duggan, as Trustee in reorganization by the order of the Missouri Court dated April 19, 1944 (Record, p. 51), the Referee incorporated in his certificate on review a certain summary of evidence (Record, p. 6) purported to have been heard at a first meeting of creditors on March 7, 1944, and a certain summary of a hearing held on January 24, 1944, and before the National was adjudicated a bankrupt, on the petition of a creditor for the appointment of a receiver, together with purported findings of fact made by him on that hearing and dated February 1, 1944. In addition the Referee incorporated certain "Findings of Fact" which did not purport to be based on any evidence heard by him on the hearing on the motion to confirm the sale and in these "findings" for the first time concluded that the capital stock of the bankrupt corporation was the property of J. M. Brown and A. B. Christopher and said bankrupt corporation was not a subsidiary of Christopher Engineering Company (Record, p. 16).

No additional evidence was heard by the District Judge on review, but the certificate of the Referee was neces-

sarily included in the transcript of the evidence prepared for the Circuit Court of Appeals.

Of course the transcript did not include the so-called exhibits, incorporated by the respondent as an appendix to his Brief herein, for the reason that the said exhibits were never offered in evidence before the Referee. In fact, most of the so-called exhibits indicate on their face that they were not so offered and respondent concedes as much (Resp. Brief, p. 55).

Exhibit No. 1 (Resp. Brief, pp. 56-64) is certified by the Clerk of the St. Louis Court as of May 19, 1944, seventeen days after the hearing was had before the Referee.

Exhibits No. 2, No. 3, No. 4, No. 5 and No. 6 are certified by the same Clerk as of May 19, 1944 (Resp. Brief, p. 76).

Exhibits No. 7 (Resp. Brief, p. 77) and No. 8 (Resp. Brief, p. 80) are also certified by the same Clerk under date of May 19, 1944.

Exhibit No. 9 (Resp. Brief, p. 83) was certified by the same Clerk on January 5, 1945, eight months after the hearing, and Exhibit No. 10, with Exhibits A and B attached, purporting to be proof of claim of J. M. Brown in the Indiana Court, was certified by the Clerk of that Court on the third day of February, 1945. The last named claim was not filed in that Court until September 2, 1944, and recites that it was filed with the reservation of Brown's objections to the jurisdiction of the Indiana Court and was filed for the purpose of protecting and preserving his rights until a final determination of the jurisdictional question involved was had (Resp. Brief, p. 87).

Notwithstanding that the record had been made up and certified in accordance with the rules for appellate procedure, the respondent, precisely as he had done in his Brief in opposition to our petition for prohibition and precisely as he has done in this Court, incorporated either the same purported exhibits or other exhibits in his Brief on the merits and, because of the limited time allowed the appellants, we were unable to supply a Reply Brief. At the trial the respondent, over the protest of petitioners' counsel, argued the so-called exhibits and drew inferences therefrom calculated, in the words of Judge Briggie, who dissented (Record, p. 102) to reflect upon the integrity of the findings of the Missouri Court.

Appellants' counsel did not apprehend that the Court of Appeals would consider these alleged facts *de hors* the Record. Judge Sparks, however, in his opinion (Record, p. 91) on the basis of these alleged facts and the alleged facts incorporated in his certificate by the Referee delivered an opinion which, again in the words of Judge Briggie, "is pregnant with a recital of facts reflecting upon the integrity of the findings of the Missouri Court, all of which I respectfully submit are irrelevant in the consideration of questions before us" (Record, p. 102).

In preparing our petition for certiorari to this Court we at first incorporated therein as another reason for the intervention of this Court the charge that the Court below had "so far departed from the accepted and usual course of judicial proceedings or had so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision" (Rule 38).

Upon consideration, however, it developed that no other Judge had concurred with Judge Sparks in the use he had made of the purported facts irregularly presented to the Court and we concluded that it would be an imposition on the time of this Court to undertake to convince it that it ought to issue its writ of certiorari to review a minority opinion, hence based our application on what we deemed important questions relating to the dignity of judgments of courts of the United States when attacked collaterally and to a proper construction of the Chandler Act with reference to the right of a subsidiary to file for reorganization before the Court in which its parent is being reorganized.

We are confronted with the same situation again in this Court and are in more or less of a quandary as to what we ought to do in the circumstances.

We realize that it would lead to intolerable confusion to permit counsel to be jumping up and down in an appellate court objecting to opposing counsel's departure from the Record in the course of his argument and no Court could permit it. Nevertheless, to stand silently by and permit such a departure might imply that we concurred in the departure. Reference to Judge Sparks' opinion indicates that he drew that conclusion. On a number of occasions in his opinion he reiterated the fact that the so-called evidence or "facts" were not disputed, overlooking the fact that since we had never been granted a hearing on the alleged facts and no provision is made in appellate procedure for disputing facts dehors the Record, we had never been given an opportunity in an orderly way to dispute the facts.

Judge Sparks in his opinion (Record, p. 95) in discussing the alleged facts said:

"We do not discuss the facts about to be related for the purpose of showing that the Court in Missouri erred in deciding the merits of the petition but rather for the purpose of showing that it was without jurisdiction to enter such order."

Our distinguished and estimable opponents in their Brief precede the extraneous facts set forth in their Appendix B by the statement:

"The proceedings included in this appendix are set forth for the information of the Court, for the reason that they were also before the United States Circuit Court of Appeals for the Seventh Circuit under the following circumstances."

and recite that they were included in respondent's Brief in the Court below "in order that the Court might have a more complete picture" (Resp. Brief, p. 55).

If we might for a moment follow the procedure of our opponent and indulge ourselves in facts off the record, we would say that there has never been any plausible way of maintaining that the Christopher Engineering Company did not own all the stock of National Aircraft Corporation, since the Circuit Court of the City of St. Louis, sometime before the Christopher petition was filed, decreed that Brown and Christopher held all the stock of National as trustees for the Christopher Engineering Company.

May we reiterate that we recite these facts not for the purpose of establishing that National either was or was not a subsidiary of Christopher on December 27, 1943, but for the purpose of demonstrating the fact,

which needs no demonstration, that ex parte and hearsay evidence which has not been tested in accordance with the rules of due process is absolutely worthless.

We therefore respectfully ask the Court to sustain our Motion to Suppress.

# I.

**Respondent argues I: "The Indiana Court had the right to determine from the facts in its own record that it had jurisdiction to confirm the sale of assets of National Aircraft Corporation made on April 20, 1944" (Resp. Brief p. 15).**

On the authority, among other cases, of *Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371, 84 L. Ed. 329; and *Rippeberger v. A. C. Allyn Co., Inc.*, 113 Fed. (2d) 332, both of which cases were cited in our original Brief, respondent asserts:

"It is axiomatic, under our Federal system, that a Court has the right to judge of its own jurisdiction" (Brief, p. 21.)

This principle, disregarded by the Court below, we have steadily urged. But upon what principle does respondent, and the Court below, deny that privilege to the Missouri Bankruptcy Court sitting in a reorganization proceeding?

We have never challenged the jurisdiction of the Indiana Court to rule upon respondent's motion to confirm his sales. Our complaint is that it erred in confirming the sale because on the face of the record before it its power to confirm the sale had been stayed and its jurisdiction to sell the property superseded by the jurisdiction of the Missouri Court. We have directly attacked the adverse ruling.

In the respondent's report and motion to confirm the sale (R. 38) he recited that he had been served with the judgment order of the Missouri Court (R. 41) approving National's petition for reorganization under Chapter X with its parent Christopher and restrained from proceeding with the proposed sale. He attached a copy of the Judgment Order to the Report of Sale as Exhibit A (R. 41). Accordingly, the Indiana Court had before it incontrovertible evidence that its power to confirm the sale had been stayed by a reorganizing Court:

"Section 148. Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy \* \* \*

11 USCA-548.

It cannot be seriously urged that the Indiana Court was vested with an inherent jurisdiction which Congress could not impair or suspend or that the respondent had any personal and vested interest in the assets which survived the jurisdiction of the Court which appointed him or in the continuance of the ordinary proceedings in Indiana, which Congress was powerless to suspend. After all, the Indiana Court was a creature of Congress with a jurisdiction bounded by the Congressional will and respondent was merely its officer. Sitting as a Court in ordinary bankruptcy it could not complain that Congress had made its continued power to proceed subject to be stayed by another Court sitting as a reorganization Court under Chapter X, any more than it could complain that its orders could be vacated by a statutory Circuit Court of Appeals.

Under Article I of Section 8 of the Constitution, Congress is vested with sweeping power to establish uniform laws on the subject of bankruptcy throughout the United States and to constitute tribunals inferior to the Supreme



Court and prescribe their jurisdictions. Paraphrasing the language of the Court in *Tilt v. Kelsey*, 207 U. S. 43-56. It had the power (if not the duty) to provide a tribunal under whose direction the bankruptcy law enacted by it might be interpreted and carried into effect. It might exercise this power by conferring jurisdiction upon a single court or by dividing the jurisdiction among two or three courts. It might determine that the bankruptcy jurisdiction should be exercised exclusively in one or divided among two or more courts as it, the legislative arm of the sovereign power, might determine.

"But somewhere the power must exist to decide finally, as against the world, all questions which arise in the settlement of the succession (in the reorganization). Mistakes may occur and sometimes do occur, but it is better that they should be endured than that, in a vain search for infallibility, questions shall remain open indefinitely."

Congress accordingly enacted the Chandler Act providing in Chapter X a comprehensive scheme for the reorganization of distressed corporations to be initiated by petition, voluntary or involuntary.

The sole limitation upon the right to invoke the jurisdiction of the Court, as distinguished from the right to the relief sought, is found in:

"Section 126. A corporation \* \* \* may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter"

11 USCA 526.

Though Congress might have divided between two or more courts the jurisdiction to decide, **finally as against the world all** questions which might arise upon the initiation of a reorganization proceeding, it is certain that it

intended to confer exclusive jurisdiction upon a single Court, the Court in which the first petition under Chapter X was filed.

"Section 111. Where not inconsistent with the provisions of this chapter, the Court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property wherever located."

11 USCA 511.

Accordingly, respondent conceding that it is **axiomatic** that a Federal Court has a right to judge its own jurisdiction, it would follow that the Indiana Court, sitting in ordinary bankruptcy, erred in going behind the face of the unambiguous judgment of the Missouri Court and denying its effect on "**facts**" either in its own records or extraneous thereto, inconsistent with the implications of the judgment.

Since our attack is direct and timely and not collateral, the judgment below may be set aside without doing violence to the principle which the respondent concedes is **axiomatic** and without examining the competency, relevancy and evidential effect of the other "**facts**" which respondent asserts were within the records of the Indiana Court or "**facts**" which by his industry he has irregularly supplied this Court, or the Court below, de hors the record and without according his adversaries an opportunity either to dispute or to explain.

A.

(Resp. Brief, p. 16)

Since the Missouri Court approved the petition of National before the sale was had in Indiana, it is not necessary to decide or discuss the question submitted by

respondent as to whether or not the Missouri Court had power, as an incident to its jurisdiction in the Christopher or parent proceeding to enjoin the sale of National's assets before the petition by National was filed.

In passing, however, it may be noted that under Section 2a (11 USCA 11a) bankruptcy courts are vested with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction under the Act, and under Section 262 of the Judicial Code (11 USCA 377) the Missouri Court had power to issue such writs, agreeable to the usages and principles of law, as might be necessary for the exercise of its jurisdiction.

Cf. Remington on Bankruptcy, Vol. 10, Sec. 4405, p. 296; Sec. 4406, p. 300.

#### B.

Respondent urges that the Missouri Court order approving the National petition did not have the effect of staying the proceedings in Indiana because the Indiana Court had in its records "direct evidence and findings of fact that National was not a subsidiary" (Resp. Brief, p. 21).

In other words, respondent insists that a judgment of a Court of the United States which is authorized to and does enjoin a collateral proceeding, may not be given effect collaterally if the collateral court whose jurisdiction is stayed, has knowledge of facts from which it concludes that the primary court was wrong in its conclusions. And insists that in such case the collateral court may, in effect, review the legal and factual conclusions of the primary court and measure its conclusions against the weight of the facts within the knowledge of the col-

lateral court and deny or give effect to the judgment according to the weight of such "evidence."

The only trouble with the "direct evidence and findings of fact" purportedly in the possession of the Indiana Court is that they were not offered in the right court or in a court where the question "subsidiary vel non" was in issue and where their competency, relevancy and materiality could have been ruled upon and the alleged facts themselves rebutted or explained, or so far as that is concerned were not offered, were never offered in evidence in the proceeding for the confirmation of sale involved in this case, but were simply incorporated in his "certificate" by the Referee from his own memory or files. As pointed out by Judge Briggie in his dissenting opinion (R. 101) the question of stock ownership of National was never in issue in the Indiana Court and never became relevant in any court until the subsidiary petition was filed in the Missouri Court and

"I therefore look no further on this question than the findings and order of the Missouri Court \* \* \* (R. 101). If the Missouri Court acted improvidently or reached erroneous conclusions of fact or law that was a matter to be challenged by direct appeal and not a matter for collateral consideration by the Indiana Court or by this Court. It is my judgment we must give full faith to the findings and order of the Missouri Court" (R. 102).

The so-called evidence and findings of fact has been discussed elsewhere in this Reply Brief.

The analogy asserted by the respondent between the instant case and cases cited by him relating to succession taxes (Resp. Brief, p. 18) does not exist and the same may be said of the Williams v. North Carolina case, 89 L. Ed. 1123, No. 15 Advance Sheets.

All such cases are dependent upon domicile as a prerequisite to jurisdiction and may be distinguished from the instant case upon consideration of one fundamental principle of jurisdiction, that is, the constitution of the court and the power of the constituting authority to regulate the subject matter.

No court can be vested with jurisdiction over a subject matter which is beyond the power or the authority of the power constituting the court to regulate.

In the *Tilt v. Kelsey* case (207 U. S. 43) the New Jersey Court, whose judgment it was sought to uphold, was constituted either by the statute or Constitution of New Jersey, and in the *Dorrance* case (115 N. J. Eq. 268) the Pennsylvania Court whose judgment was involved was likewise created by the laws of Pennsylvania. In the *Williams v. North Carolina* case the Court whose judgment was involved was a Nevada Court.


The question in each case was whether or not, in a case dependent upon domicile, the particular judgment which affected the sovereign interest of another state was *res judicata* and binding upon the courts of such other state, or whether such other state might, in a collateral proceeding, to which it was a party, challenge the finding, express or implied, that the deceased or the parties to the marital contract, as the case might be, was domiciled in the jurisdiction of the Court rendering the judgment. The finality of the judgment in the jurisdiction of the rendering court was not in question.

In each case also the fact obtruded that another state, New York, New Jersey, or North Carolina, respectively, asserted a personal or sovereign right or interest in the subject matter separate and apart from the interests of

the immediate parties to the suit. Neither could the parties, to the suit or proceeding, culminating in the asserted judgment, be considered agents for or in privity with the several states involved and were in fact actually or potentially adverse in interest to the state.

In each case the Legislature or people in the particular state wherein the judgment was rendered had ample authority to vest a court with jurisdiction to adjudge the tax obligation or marital status, as the case might be, of persons domiciled in their respective states, but were wholly without authority to confer jurisdiction to adjudge or assess the tax liabilities of citizens of another state to such other state in a suit to which the other state had not consented or been made a party, or to adjudge the marital status of residents of any other state, in such manner as to exempt them from the police regulations of the state of their domicile.

It is true, by the Federal Constitution, which may be considered as a compact between the states, provision is made whereby the states are bound to give full faith and credit to the public acts, records and judicial proceedings of every other state (Const., Article IV, Section 1), but underlying the constitutional provision is the implied undertaking of each state to confine its public acts and judicial proceedings within proper bounds, so as not to impair the sovereignty of another state. An inherent attribute of sovereignty is the power to regulate the marital affairs and to tax persons domiciled in the state. Exemption from suit, except where it is consented to, is also an inherent attribute of sovereignty, although such exemption is not specifically reserved in the Federal Constitution.



If a state legislature should undertake to authorize one of its courts to entertain a direct suit against a sister state, without its consent, there is no doubt that a judgment rendered under such conferred power, however regular otherwise, would not be entitled to faith and credit. All because the Court undertook to adjudge a cause that did not pertain to its constitution as a court of a particular state empowered only by local authority. Likewise, it does not pertain to the constitution of the courts of one state to adjudge the marital status of citizens of another state or to authorize parties to cohabit in another state in violation of the laws of such other state, or to adjudge or discharge indirectly the tax liabilities of a citizen of another state to such other state without the consent of such other state.

Such a situation does not exist in the instant case. Here the thing involved is corporate reorganization exclusive under the bankruptcy power conferred on Congress. Only one sovereignty is involved. Both courts are constituted by Congress. Congress could confer jurisdiction in reorganization on one or several courts. It might have established an administrative agency in bankruptcy and provided for an appeal to a district court or court of appeals directly from the agency, or it might have established a special court as it did in the Price Administration Act, or as it has done in various other cases. It could establish in effect a special court of three judges and provide for a direct appeal to this Court, as in cases involving the constitutionality of state statutes, etc. Or it could have provided for a system of court administration of ordinary bankruptcy and established a special or other court or administrative board for reorganization. Or, it could do as it did in the Chandler Act: Authorize a petition for reorganization to be filed in any court of bank-



ruptcy, provided no other reorganization petition is pending by or against the corporation and, regardless of pending ordinary bankruptcy or equity receiverships, confer on the court in which the petition is filed exclusive and nationwide jurisdiction to adjudge the suit, and as an incident thereto, authorize it to adjudge its own jurisdiction, by a judgment impregnable against collateral attack.

"Section 111. Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

#### 11 USCA 511

And empower the Court wherein the petition is filed with authority while the petition was under consideration to enjoin ordinary bankruptcy proceedings (Section 112, 11 USCA 512), and provide that the approval of the petition should operate as an automatic stay of a prior pending bankruptcy. (Section 148.)

Cf. *Kalb v. Feuerstein*, 308 U. S. 433-439, 84 L. Ed. 370-375.

**Respondent asserts (Brief, p. 21) that the Indiana Court and the Missouri Court were of equal and coordinate jurisdiction. The assertion is incorrect.**

Insofar as both courts are designated courts of bankruptcy with general jurisdiction to entertain either ordinary bankruptcy petitions or reorganization petitions, that statement is true in the abstract. However, to assert that they were of coordinate jurisdiction when one was entertaining a petition in ordinary bankruptcy and the other a petition in reorganization is to assert a proposition directly in the face of the statute.

As a court proceeding in ordinary bankruptcy, the Indiana Court was given no power to interfere with or stay a proceeding in reorganization while, on the contrary, a bankruptcy court proceeding in reorganization is expressly authorized to stay proceedings in ordinary bankruptcy (Sections 113, 148, 11 USCA 511-548) and is given a jurisdiction supersessive to that of all other courts, including courts of ordinary bankruptcy. Under such circumstances the jurisdiction of the court proceeding in ordinary bankruptcy is inferior and subject to the jurisdiction of a reorganization court. The jurisdictions in such case are no more coordinate than that of a Circuit Court of Appeals and a District Court. Although both judges are District Judges, they are no more coordinate than would be the case if one of the judges was sitting as a judge of the Circuit Court of Appeals and the other judge was trying a jury case.

Respondent attempts to distinguish the case of *Kalb v. Feuerstine*, 208 U. S. 433, 84 L. Ed. 370, cited in petitioners' original Brief, by asserting that there was no question whether or not the debtor in that case was a farmer. The ground of the decision in that case was not whether or not the judgment of the Federal Court under the Frazier-Lemke Act was supported by evidence or findings of fact, but whether or not the mere filing of a petition operated to subject the petitioners' person and property to the jurisdiction of the bankruptcy court and automatically ousted the jurisdiction of all other courts (l. c. 439), and the Court said:

"The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone."

Consult also *First National Bank v. Klug*, 186 U. S. 202, 46 L. Ed. 1127, cited 254 U. S. 348, 65 L. Ed. 297.

On page 22 of his Brief respondent asserts that there was ample evidence in the record to support the Indiana Court's finding that National was not a subsidiary of Christopher.

The evidence relied upon purports to be the testimony of J. M. Brown given, not in the present proceeding but at the first meeting of creditors in National's bankruptcy proceeding on March 7, 1944, to the effect that he and A. B. Christopher owned the capital stock of National.

In the first place Brown's testimony, if he did so testify, was at the first creditors' meeting and was not competent evidence in any other proceeding or in a proceeding between petitioners Duggan and National and respondent Sansberry.

It could not have been in the nature of impeachment testimony, since Brown did not testify at the hearing on the confirmation of sale. It could not have been in the nature of a judicial admission, since, if made at all, it was made prior to the time National's petition for reorganization was filed and prior to the time when petitioner Duggan was appointed Trustee for it in reorganization. Respondent's citation is to page 6 of the Record, where the Referee incorporates under the title "Summary of the Evidence" purported testimony of Brown purporting to have been given at the first meeting of creditors. The Referee does not certify that any part of this purported testimony or the things referred to under the Summary of Evidence were offered in evidence at the hearing on the report and confirmation of sale. The pro-

ceedings on the confirmation of sale is found on page 3 of the Record and the judgment confirming the sale is based on the finding that title to the assets was in Sansberry and the assets were in the custody and control of his Court, and the report of sale should be approved on ordinary considerations.

The exhibits relied on were not in the Record before the Indiana Referee at all, nor in the Record submitted to the Circuit Court of Appeals. This definitely appears from the fact that respondent's citations are not to the official Record, which has been certified to this Court, and which does not contain the "exhibits" but to pages of the respondent's Brief.

We have referred to and discussed the manner in which this purported Record is presented to the Court elsewhere in this Brief. Suffice it to say that none of these exhibits were offered before the Referee or before the Judge of the Indiana Court, and the testimony of Brown, if offered at all, was not offered at the hearing involved in this appeal.

The purported findings of facts (Record citation, p. 12) were voluntarily made by the Referee after the entry of the order confirming the sale found at pages 3 and 4 of the Record and do not purport to have been made upon any evidence heard by the Referee in connection with the confirmation of sale involved in this suit. It is true that one of the Judges below (Judge Sparks) referred to and to some extent based his conclusions upon this purported testimony and upon a number of the purported exhibits incorporated by the respondent in his present Brief, which are not exhibits at all but purport to be documents selected from the files of the Missouri Court

or from the files of the Indiana Court by respondent, and stated that these "facts" were not disputed. They were not disputed because the petitioners had never been afforded an opportunity either to dispute or explain them. They were not offered in evidence in the lower court and the exhibits were not in the transcript certified to the Court below. They were for the first time produced by the respondent in the Court of Appeals by being inserted in his Brief or exhibited to the Court at the oral argument after our Brief was printed and filed. There is no provision made by law or rules of court whereby an issue can be raised and determined with respect to evidence irregularly offered de hors the record or whereby such evidence can be disputed or explained. An appellate court sits as a court of review and not as a court of original jurisdiction to receive and weigh original evidence.

We felt we could not complain to this Court of the use Judge Sparks made of the purported evidence, since no other Judge concurred with him in that use. Perhaps we were wrong but we felt this Court would not issue certiorari to review a minority opinion. Respondent has followed the same procedure in this Court.

C.

Respondent urges that the order of the Missouri Court had not become final on May 3, 1944, when the Indiana Court's order approving the sale was entered, and that the order was therefore subject to collateral attack in the Indiana Court (Resp. Brief, p. 25).

It is true that the order of the Missouri Court entered on April 19, 1944, was subject to direct appeal by any interested party for a period of thirty days after it was

entered or forty days dependent on whether or not notice of the order was served on the interested party within five days. Notice of the order was served on the respondent on the day after the order was entered and, assuming that he was an interested party who might have attacked the judgment by direct appeal, that time did not expire until May 19th.

But the mere fact that the time for appeal had not expired did not alter the force of the order collaterally. The mere fact that the order was undoubtedly appealable itself confirms its finality, since only a final order is appealable in any event. The order not only automatically, but expressly restrained, the sale. The Court had power to restrain the sale even before approving the petition (Section 112, 11 USCA 512).

Regardless of the character of the order, it was final in the sense that it exhausted the power of the Court over the issues resolved by the order. Of course, procedure is established by the Act and by the Code of Civil Procedure, whereby interested parties may secure a review and obtain relief from an improvident order in the same Court, but that relief is to be had only upon application to the Court entering the order. It may not be had in a collateral court.

In a sense all orders prior to a final order approving a plan or dismissing or adjudicating the petitioner a bankrupt or remanding the cause, or reinstating a prior pending proceeding are interlocutory in their nature in the sense that in most instances they are subject to review and revision by the same Judge, but they are nevertheless res judicata and immune to collateral attack.

In re Loewens Gambrinus Brewery Co., 141 Fed.  
(2d) 747.



Respondent recites on page 25 of his Brief a statement of the Senate Committee on the Judiciary to the effect that Section 149 was designed to foreclose all direct or collateral attacks upon jurisdiction or venue once the period for appeal from an order approving a petition has expired and concludes Congress intended to permit a collateral attack on the order prior to the expiration of the appeal time. Of course, it is clear that the Senate Committee had in mind foreclosing attacks upon jurisdiction at all events after the time for direct attack had expired, contrary to the general rule that an order of a court may be attacked at any time in the same court on jurisdictional grounds. The Committee did not mean to modify the clear and unambiguous provisions of Section 111 (11 USCA 511), conferring upon the Court exclusive jurisdiction upon the mere filing of a petition, or the provisions of Section 148 providing that the order approving a petition shall automatically stay pending bankruptcy proceedings.

Applying respondent's construction of the law would in effect, and in any case postpone the reorganization Court's control of the debtor and its assets until the appeal time had expired, and permit the dissipation of the debtor's assets while judgment order was becoming "final."

Respondent also (p. 26) quotes Section 161 of the Act (11 USCA 561), which provides that a judge shall fix a time of hearing to be held not less than thirty days and not more than sixty days after the approval of the petition and give notice of such hearing to creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may direct. It will be noted that respondent is not of the class of persons required to be notified in any event. From the fact that



there is no showing that such notice of hearing was given respondent concludes that the judgment approving the petition was subject to collateral attack. Naturally such notice does not appear in the judgment order approving the petition, since the Act contemplates that the notice will not be given until the petition has been approved. Section 161 also contemplates that it will not be made until such time as a list of creditors is filed, since until that time the trustee is without the means or information necessary to give the notice.

But respondent does not cite Section 162, which discloses the purpose of the hearing:

"Section 162. At the hearing required by Section 161 of this Act, or at any adjournment thereof, or, upon application, at any other time, the judge may hear objections to the continuance of the debtor in possession, or to the retention of office of a trustee upon the ground that he has not qualified or not disinterested, as provided in Section 158 of this Act."

(11 USCA 562).

The purpose of the hearing described in Section 161 is not for the purpose of reviewing the propriety of the order approving the petition, hence such notice or the failure to give such notice has no effect upon the validity of the order approving the petition.

Section 137 (11 USCA 537), quoted by the respondent, provides that prior to the first date set for the hearing provided in Section 161 an answer may be filed controverting the allegations of a petition by or against a debtor by any creditor or indenture trustee or, if the debtor is insolvent, by any stockholder of the debtor, and Section 144 provides for the hearing and determination of the issues raised by such answer.

Again it will be noted that the respondent, Sansberry, as a trustee in ordinary bankruptcy, is not among those classes of persons authorized to controvert the allegations of a petition for reorganization, and for the very good reason that he is merely the officer of the Court, whose jurisdiction was automatically ousted by the approval of the petition, and his authority could not survive the authority of the Court which appointed him. His activities as trustee was a part of the proceeding that was automatically stayed.

At any rate, the respondent, Sansberry, was given notice of the judgment order immediately (next day), and was in a position to apply to the Missouri Court and ask for a decision on his right, if any, to controvert the allegations of the petition, or to make such other motion as he deemed proper. The fact that interested parties are authorized to intervene and defend against the petition does not imply that the judgment may be subjected to collateral attack by one who has actual notice of the proceeding.

See *American Surety Co. v. Baldwin*, 287 U. S. 158; 77 L. Ed. 231, discussed supra.

Respondent's discussion further, on page 27 of his brief, of the use of the word "final" in several sections of the statute proceeds on the theory that any judgment order of a Court is subject to collateral attack at any time before it becomes immune to direct attack.

The cases cited by the respondent are not germane to the issues in this case.

In *Bohler v. Calloway*, 267 U. S. 479, 69 L. Ed. 745, this Court merely ruled that the denial of an interlocutory

injunction against proceedings by an arbitration board upon a tax adjustment was not *res judicata* upon the question of whether or not the statute providing for such board had been repealed by a later statute.

The case of *Santowsky v. McKey*, 249 Fed. 51, cited by respondent, involved a petition to review and revise an order of a district Court and the ruling was to the effect that the previous action of the Court in overruling a motion to dissolve a temporary injunction did not constitute a final ruling on the ownership of property therein involved, or to prevent the same Court thereafter considering a petition to determine the title involved.

The case of *Nardi v. Poinsett*, 46 Fed. (2d) 347, involved a suit in the District Court for the Northern District of Indiana, on a judgment rendered by the District Court for the Northern District of Illinois, on a so-called "judgment note." It was defended on the ground that the Illinois Court did not have jurisdiction of the person of the defendant Poinsett. The Court found, for the defendant on the ground that the Illinois judgment was obtained by the plaintiff as a result of fraud upon the Court at the time the judgment was rendered and on the ground that while the note authorized "any attorney of any Court of record" to appear and confess judgment, the certified proceedings of the Illinois Court indicated that judgment was confessed by an "attorney in fact," and the certificate did not disclose that the judgment was not confessed by any one authorized so to do by the note. Therefore, it was ruled the Court was without jurisdiction (of the person) to proceed to judgment.

We have heretofore discussed the case of *Williams v. North Carolina*, 89 L. Ed. 1123 (Advance Sheets 1945),

and pointed out that where the issue involves a subject matter beyond the power of the authority constituting the Court, to regulate as well as beyond the power of the Court to adjudge, such as domicile of non-residents in succession and divorce cases, that the Court of one state undertaking to determine that question could not block a reconsideration of the underlying jurisdictional fact by another state under the full faith and credit provisions of the Constitution. This Court in its several opinions in the Williams case did not go beyond the facts developed in that case, which indicated that the defendants in the Nevada divorce cases did not appear in Nevada and contest the jurisdiction of the Nevada Court. In passing it might be suggested, hypothetically, that an appearance and actual contest of jurisdiction by a defendant would not necessarily have barged the inherent right of North Carolina, as a sovereignty, to deal with the marital status of its domiciled citizens. It is doubtful if there is sufficient privity between the state and its citizens to bind the state by the act of a private individual. This is more obvious when we consider cases involving a succession tax. It is conceivable that citizens of one state, having possession of a will wherein they are beneficiaries, might select a jurisdiction where the succession taxes were more favorable to them and in an ex parte proceeding secure the probate of the will in such state, which if conclusive and binding on the state would defeat its legitimate tax demands. In such case it is inconceivable that the parties, adverse in interest to the state, would be held to be in such privity to the state as to bind it by an adjudication so obtained, though the parties themselves might be estopped by the judgment.

The case of *Petition of Taffel*, 49 Fed. Supp. 109, cited by the respondent, involved the precise point mentioned

in the preceding paragraph. It involved a so-called "Mexican consent divorce decree" and the ruling summarized in the syllabus was:

"Although parties under New York law may be estopped from challenging validity of a foreign divorce decree by reason of being parties to collusive arrangement, the Federal Government or State would not thereby be 'estopped' from asserting invalidity of the decree."

The divorce, not being binding on the government, it was held a subsequent marriage of the husband to an alien, did not authorize her naturalization as his lawful wife.

The opinion in the case of Valley v. Northern Fire and Marine Insurance Co., 254 U. S. 348, 65 L. Ed. 297, was rendered on a petition to revise a judgment order of a bankruptcy court vacating an adjudication and dismissing the proceeding for want of jurisdiction on motion filed after the expiration of the time for appeal, and in the same court. The Court held that notwithstanding the time for appeal had expired, the Court which had adjudicated the corporation a bankrupt had authority to set aside the adjudication and dismiss the proceeding when it was made to appear that the bankrupt was an insurance company and not within that class of persons subject to the bankruptcy law.

In his discussion of the case Justice McKenna distinguished the case of First National Bank v. Klug, 186 U. S. 202, 46 L. Ed. 1127, wherein an involuntary bankruptcy petition had been filed against Klug on the theory that he was not engaged chiefly in farming and, upon a finding that he was engaged in farming, the Court entered

a judgment dismissing the petition, and the question of jurisdiction was certified to the Supreme Court, and this Court said:

"The conclusion was, it is true, that Klug could not be adjudged a bankrupt; but the court had jurisdiction to so determine, and its jurisdiction over the subject matter was not and could not be questioned."

Citing: *Mueller v. Nugent*, 184 U. S. 15, 46 L. Ed. 411, and other cases.

The Klug case is applicable to this case. There was no question that the debtor, National, was a corporation and, of a class which might petition for reorganization. Upon filing the petition in the Missouri Court which had general jurisdiction to entertain such petitions, the Court, regardless of whether it on the merits approved or dismissed the petition, became vested with jurisdiction over the subject matter and such jurisdiction could not be questioned collaterally.

#### D.

**Respondent asserts that the judgment of the Missouri Court was not *res judicata* as against the respondent because the respondent was never before the Missouri Court.**

If that assertion is true as to the respondent, then it is true as to every creditor and every other person interested in any reorganization proceeding, and to every trustee or receiver, conventional or judicial, since voluntary petitions are always heard and determined without notice to creditors or other parties and involuntary petitions are heard and determined only on notice to the alleged debtor. If decrees adjudicating parties bankrupt or approving petitions for reorganization were dependent

for validity upon prior notice to creditors and other parties, then bankruptcy or reorganization in any case would be impracticable.

In the case of *Hanover National Bank v. Max Moyses*, 186 U. S. 181, 46 L. Ed. 1113, this Court sustained the validity of an adjudication in bankruptcy on a voluntary petition. The Hanover Bank was a creditor of Moyses domiciled in another state and was not a party to the proceedings in bankruptcy and did not enter its appearance therein for any purpose, nor did it prove its claim or in any way subject itself to the jurisdiction of the District Court in the proceedings. It was not served with process of any kind on said petition for adjudication and had no notice, personal or otherwise, of the said proceeding by voluntary petition for adjudication and no notice was given to it or any other person on its behalf in the proceeding. Subsequently the Bank brought suit against Moyses in the United States Court for the Eastern District of Tennessee and challenged the constitutionality of the Bankruptcy Act on the ground it violated the Fifth Amendment since it did not provide for service of process upon or personal notice to creditors. This Court, in an opinion by Chief Justice Fuller, examined the validity of the proceeding and of the statute and said (l. c. 192):

"Service of process or personal notice is not essential to the binding force of the decree."

The cases of *Aspen v. Nixon*, 4 How. 467, 11 L. Ed. 1059, and *Troxell, etc., v. Delaware L. & W. Railway*, 227 U. S. 433, 57 L. Ed. 586, have no application to the instant case.

In the case of *American Surety Company v. Baldwin*, 287 U. S. 158, 77 L. Ed. 231, heretofore cited by us, and



again cited by the respondent on page 29 of his Brief as authority for the proposition that the Missouri judgment was not binding upon the respondent because he had not been served with process. It appeared that a judgment had been rendered against the Surety Company in favor of the defendants Baldwin in the State of Idaho on an appeal bond executed by the Surety Company upon an appeal by the Singer Sewing Machine Company. Failing in its appeal, judgment was entered against the appellant and the Surety Company without notice to either under the Idaho practice. The attack against the judgment was based upon the theory that the law under which judgment was rendered against the surety without notice was in violation of the Fourteenth Amendment.

This Court on that phase of the case held that the state practice which provided for an appeal by the surety after the entry of judgment satisfied the due process provisions of the Constitution. The Court said:

"Due process requires that there be an opportunity to present every available defense; but it need not be before the entry of judgment" (citing cases), 1. c. 168.

The respondent had notice of the judgment, and, if he had an interest which was impaired by the judgment, had his remedy by application to the Court and by direct appeal.

The other cases cited by the respondent have been discussed in our original Brief or are irrelevant.

## II.

## A-B.

We have discussed in our original Brief the construction of the statutes relating to venue and the authority of the Missouri Court to entertain and adjudicate with finality as against collateral attack the petition of National.

Insofar, however, as the respondent discusses in that connection the question of transfer of proceedings under the General Orders of this Court, it is sufficient to point out that no order or provision is made for the transfer of an ordinary bankruptcy proceeding to another district and to a court which did not have jurisdiction, by reason of the domicile or place of business of the bankrupt, to have entertained a petition in ordinary bankruptcy by or against the bankrupt.

Transfers of ordinary bankruptcy are regulated by Section 32 of the Act (11 USCA 55) and transfers are limited "to cases in which two or more petitions are filed by or against the same person in different courts of bankruptcy, **each of which has jurisdiction.**" General Order 6 (11 USCA following Section 53) is identical with Section 32 of the Act.

The provision for the transfer of ordinary bankruptcies is limited to cases where both courts had jurisdiction and in the case of ordinary bankruptcies that jurisdiction is limited to jurisdictions wherein the bankrupt had its principal place of business or resided or been domiciled for the preceding six months, or to aliens who have property within the District, since under Section 2 (a) (1) of the Act [11 USCA 11 (a) (1)] the power of a court to adjudge one a bankrupt is limited to the persons designated.

The power of a reorganization court to transfer, however, is regulated by Section 118 (11 USCA 518) and the Judge is authorized to transfer a proceeding under Chapter X to a court of bankruptcy in any other district, regardless of the location of the principal assets of the debtor or its principal place of business, if the interests of the parties will be best served by such transfer.

The words "petition" and "each of which has jurisdiction" appear in Section 32 and General Order 6, but must be read in the light of the provisions of the several chapters constituting a part of the Chandler Act. In Chapter X a petition is defined as a petition proposing that a plan of reorganization be effected under Chapter X, while in Section 32 the petition referred to is a petition to be adjudicated a bankrupt.

If General Order 6 and Section 32 are transferred bodily to Chapter X and read as a part thereof, then General Order 6 and Section 32 in their application to reorganization proceedings must be interpreted in connection with the interpretation of petition as found in Chapter X, which defines petition as "a petition filed under this chapter \* \* \* proposing that a plan of reorganization be effected."

#### Section 106 (13) [11 USCA 506 (13)]

Therefore, General Order 6 and Section 32, insofar as applicable to Chapter X, must be interpreted to mean that if two petitions for reorganization are filed or are pending in different courts, as a result of which two or more courts would have jurisdiction to grant the relief sought, then the first court acquiring jurisdiction of one of such petitions (for reorganization) is authorized to provide for the transfer or consolidation of causes.

Since the General Orders are ~~not designed to modify~~ but only to carry into execution the provisions of the statute, they must not be interpreted in such manner as to conflict with the statute or to confer or take away a right contrary to the provisions of the statutes involved.

Meek v. Center County Banking Co., 268 U. S. 426.  
69 L. Ed. 1028.

**Respondent, on page 38 of his Brief, suggests that both reason and authority support the view that a petition for reorganization should be filed in the same forum in which a bankruptcy proceeding is pending.**

In support of that proposition he urges that one of the prerequisites to approval of the petition is that it must have been filed in good faith—Section 141 (11 USCA 541), and recites further: The Court in which those prior proceedings are pending **may** be the Court best able to determine whether the interests of creditors and stockholders can be served by reorganization or by liquidation.

Clearly, the question of whether or not the petition is filed in good faith is to the merits and is a question to be determined by the Court in which the reorganization petition is filed. An error of fact in determining that issue would not oust the jurisdiction of the Court.

The suggestion of the respondent that the Court in which prior bankruptcy proceedings are pending may be Court best able to determine that issue does not go to the jurisdiction of the Court, but simply to the wisdom and judgment of Congress in enacting Section 126 (11 USCA 526), which authorizes a corporation to petition for reorganization, subject only to the condition that no other petition is pending by or against it under Chapter

X and to the provisions of Section 129 (11 USCA 529), which confers upon a subsidiary an unconditional option to file a petition for reorganization "in the court which has approved the petition by or against its parent corporation."

Respondent's suggestion that it would be better if the subsidiary was required to file a reorganization petition in the ordinary bankruptcy proceeding pending against it is directed to the wrong forum. It should be directed to Congress, where such matters of policy are determined.

Likewise, respondent's suggestion that a literal interpretation of Sections 126 and 129 would result in a shuttling back and forth of the assets between an ordinary bankruptcy court and a reorganization court in the event the petition for reorganization was approved and ultimately dismissed, should be directed to Congress.

### C.

**Respondent urges that Section 129 is far more than a mere venue statute and that it is jurisdictional in its nature.**

We have discussed this question in our original Brief, but respondent (Brief, p. 41) has confused, possibly the error is typographical, the sections conferring jurisdiction on bankruptcy courts to receive petitions and adjudge persons bankrupt in ordinary bankruptcy proceedings and the sections conferring jurisdiction on bankruptcy courts to receive and adjudge petitions for reorganization. As a result of such confusion respondent states that the jurisdiction of bankruptcy courts to receive petitions for reorganization is defined in terms of venue.

As pointed out in our original Brief (pp. 24 et seq. and 46 et seq.), after defining courts of bankruptcy as including district courts of the United States, jurisdiction is granted under Section 2 (a) and numerous sub-sections of Chapter II. And there is a clear distinction between the jurisdiction of courts in proceedings in ordinary bankruptcy and in proceedings under the reorganization provisions.

The jurisdiction of bankruptcy courts to adjudge persons bankrupt is limited by sub-section (1) of Section 2 (a) [11 USCA 11 (1)] to persons generally who have resided in or had their principal place of business or assets within the respective territorial jurisdiction of the court for a period of six months preceding the petition in bankruptcy. No such territorial limitation, however, is placed upon the jurisdiction of bankruptcy courts in reorganization proceedings. Under Section 2 (a) (9) such courts are conferred with such jurisdiction as will enable them to confirm or reject arrangements or plans proposed under this Act, setting aside confirmations of arrangements or wage earner plans and reinstate the proceedings and cases. And, as heretofore pointed out, subsidiary corporations are expressly authorized by Section 129 (11 USCA 529) to petition for reorganization in the court which has approved its parent's petition.

#### D.

On page 45 of his Brief respondent reiterates the argument that the judgment order of the Missouri Court was subject to collateral attack until it had become immune to direct attack.

This question has been heretofore considered.

## III.

## A.

Under subhead III (Resp. Brief, p. 43) the respondent urges that the Indiana trustee in ordinary bankruptcy was an adverse claimant to the property of the National, hence the reorganization court in Missouri had no jurisdiction in a summary proceeding to adjudge possession of the property to the reorganization trustee or to enjoin respondent from selling the property.

The argument might be sound if the respondent was in good faith asserting an adverse title, but even in that case the Missouri Court would have had jurisdiction to determine whether or not the claim of the respondent was actual or only colorable.

Respondent, however, had no title whatever which would survive the jurisdiction of the Indiana Court; survive his removal as trustee or survive a judgment of a reorganization court superseding the jurisdiction of the court which appointed him.

The respondent concededly had no title except as an agency of the Indiana Court for the purpose of carrying into effect the provisions of the Chandler Act relating to ordinary bankruptcy.

As trustee in ordinary bankruptcy he for certain purposes represented all the parties interested in the ordinary bankruptcy, including creditors, but he did not represent creditors for the purpose of reorganization. He was not described in Section 137 (11 USCA 537) as a person who might file an answer controverting the allegations of a petition for reorganization by or against a debtor. Nor was he described in Section 161 as a person who



should be given the notice of hearing prescribed by Section 161 for the purpose of hearing objections to the qualifications of the debtor in possession or of the trustee."

Respondent concedes in effect that had the petition for reorganization been filed in the Indiana Court to which he owed his appointment, that the approval of the petition by that Court would have automatically stayed the pending proceedings in ordinary bankruptcy and upon the appointment of a reorganization trustee or upon the restoration of the possession to the debtor the respondent would have been ousted of his possession. Does he contend in that case that he would have been entitled to appear in the reorganization proceedings and controvert the allegations of the petition or litigate the order appointing his successor and appeal from an adverse ruling? Certainly he would have that right if he had a substantial adverse interest in the property, or a property right in his office, yet such a procedure would be absurd. The answer is that the respondent had no interest in the subject matter or property right in his office of which he might not be divested summarily and without notice, either by the Missouri Court or by the Court which appointed him receiving and adjudging a reorganization petition. Upon the happening of that event his title and right to possession terminated ipso facto and without the right to appeal or protest. That contingency was an incident to his office.

The respondent's custody and title were certainly not more substantial than the title of a trustee in possession under a trust deed or mortgage or that of an indenture trustee in possession, yet reorganization trustees, or a debtor if continued in possession, immediately becomes seized with the rights, if any, of a prior receiver or

trustee and with the right to the immediate possession of the property (Section 257, 11 USCA 657) and Section 657 is constitutional.

Clark Bros. Co. v. Portex Oil Co., 113 Fed. (2d) 45.

In re Park Beach Hotel Bldg. Corporation, 96 Fed. (2d) 886.

In re Grayling Realty Corporation, 74 Fed. (2d) 724.

Kalb v. Feuerstine, 308 U. S. 433-439.

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 84 L. Ed. 110.

Warder v. Brady, 115 Fed. (2d) 89.

And the cases cited and discussed in our original Brief, pp. 14, 18, 19.

#### IV.

Under subhead IV, page 46, respondent asserts that the petitioners were estopped by their conduct, and course of action in the Indiana bankruptcy proceeding from questioning the jurisdiction of the Indiana Court.

This argument is based on the assertion that petitioner Duggan and J. M. Brown had appeared in the Indiana Court personally and by their attorneys and failed to question the jurisdiction of the Indiana Court and both parties acquiesced fully in its actions, until the very eve of the sale.

Suffice it to say that the purported appearance of Duggan, by counsel, was on January 25, 1944 (R. 7), was some three months before the National petition was filed in the Missouri Court and a like period of time before Duggan was appointed trustee in reorganization for National. His appearance was on behalf of Christopher Engineering Company. Even if his appearance had been on

behalf of the National Aircraft Corporation, or if the National Aircraft Corporation itself had appeared, the National would not have been estopped, nor could it have estopped creditors of National from filing a petition for reorganization wherever it was authorized by law to file it.

In the case of *Brooklyn Trust Co. v. Rembaugh*, 110 Fed. (2d) 838, the Second Circuit held a debtor's petition was not filed in good faith since it was seeking to escape the jurisdiction of the state Court to which it had voluntarily submitted itself.

In the case of *Marine Harbor Properties, Inc. v. M. F. R. S. Trust Co.*, 317 U. S. 78, 87 L. Ed. 64, this Court referring to the *Brooklyn Trust Co. v. Rembaugh* case:

"But that is not the test which Congress has provided in Section 146 (4) [11 USCA 546 (4)]: That provision requires the bankruptcy Court to inquire whether the interests of creditors and stockholders would be better subserved in the prior proceedings or under Chapter X. That the desire of petitioner to escape the prior proceedings is immaterial to that inquiry is supported not only by the language of Section 146 (4), but also by the fact that Section 256 expressly sanctions the filing of petitions under Chapter X, although prior proceedings are pending. To disqualify a petitioner under Chapter X merely because he had in some way participated in the prior proceeding would effect a substantial impairment of Section 146 (4), since it would be the exception rather than the rule where both the debtor and the creditors had not taken some part in the prior proceedings. Furthermore, the issue as to the adequacy of the prior proceedings, as compared with Chapter X, is the same whether the petition is filed by creditors or by the debtor" (l. c. 85).

## B.

The respondent urges as an element of estoppel the alleged fact that in reliance on the representations and acquiescence of Duggan, Trustee, and J. M. Brown he had spent several thousand dollars in preserving the assets of the National Aircraft Corporation.

That constitutes no consideration, nor is it an element of estoppel. The costs, if any were expended, are chargeable to the fund and even the bankruptcy trustee's compensation is preserved to him in the reorganization proceeding.

### CONCLUSION.

We respectfully suggest that the judgment of the Court below ought to be vacated and set aside with instructions to the lower Court and the respondent Trustee to conform themselves to the judgment of the Missouri Court in accordance with the provisions of Chapter X of the Chandler Act authorizing that Court by its judgment order to centralize in itself, for the purpose of reorganization, all the assets and control of the debtor and its assets and the settlement with finality and effect of the numerous questions that will arise on reorganization.

Respectfully submitted,

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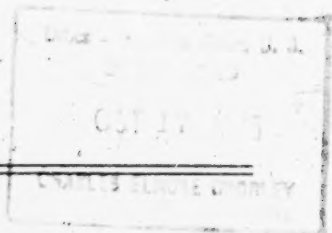
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JEROME F. DUGGAN, *pro se.*

FILE COPY



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IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1945

Nos. 418 and 419

IN THE MATTER OF: NATIONAL AIRCRAFT CORPORATION, a Corporation, Debtor

JEROME F. DUGGAN, Trustee of the Estates of Christopher Engineering Company, a Corporation, and National Aircraft Corporation, a Corporation,  
*Petitioner,*

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,  
*Respondent,*

NATIONAL AIRCRAFT CORPORATION,  
a Corporation,

*Petitioner,*

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,  
*Respondent,*

RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

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## SUMMARY OF ARGUMENT

*As to the Facts.* The petitioners have not presented to your Court the facts, evidence and pleadings that the Circuit Court of Appeals had before it. They, therefore, are not entitled to the requested writ. . . . . 8

*Binding Effect of Findings.* There is definite finding of fact that National was not subsidiary by Referee, approved by District Judge and affirmed by Circuit Court of Appeals. The findings of a Referee, approved and affirmed by the District Judge, are binding upon the Circuit Court of Appeals, unless clearly erroneous. Cases are cited to this effect. There was no such clear error and the writ should not be granted. . . . . 9

*No Writ to Review Evidence.* The Supreme Court does not grant certiorari to review evidence, but accepts concurrent finding of two Courts, unless clear error is shown. This was not, and writ should not be granted. . . . . 9

*Referee's Orders Are Res Judicata.* The orders of the Indiana Referee as to restraining order, appointment of Receiver, of Trustee, order of sale, and that denying stay in the absence of review have the force and effect of judgments and are res judicata. . . . . 10

*Equitable Estoppel.* The petitioners, by their course of conduct in the Indiana Court, should be regarded as estopped from preventing confirmation of sale of assets. . . . . 10

*As to Jurisdiction.* The National Aircraft Corporation was held not to be a subsidiary of Christopher in Indiana proceeding, the Referee's finding and order being approved by the District Judge and affirmed by the Circuit Court of Appeals. The four sections of the Chandler Act, as to venue and jurisdiction, were

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properly construed together by the Court below, and it has rightly held that a subsidiary could not file for reorganization in a parent proceeding in another District with a prior regular bankruptcy pending. The word "original" has the significance attributed to it by the Court below. This is established by sections of the Act, as well as by cited cases. . . . . 11

*The Clean Hands Doctrine.* Courts of Bankruptcy are Courts of Equity. The petitioners not having clean hands, were not entitled to prevail below and are not entitled to the writ. . . . . 14

*Consideration of Questions Presented.* A. Petitioners' question A. is analyzed and there is consideration of the cases cited by them under this letter and assertion of their inapplicability to the instant case or the granting of writ. The Missouri proceeding was ex parte, without notice or final decree. . . . . 15

B. This includes an analysis of petitioners' Question B. of one of their cited cases in this Court, which it is believed justifies respondent's position. . . . . 19

C. This analyzes Petitioners' Question C. and considers their cited case as aiding Respondent's position, and the Williams v. North Carolina opinion, cited by them, is also discussed. "Full faith and credit," as affecting inquiry into jurisdiction, is also considered . . . . . 21

*Res Judicata of Missouri Court Order.* The order of the Missouri Court relied upon was not a judgment or final, but was interlocutory, as shown by the cited provisions of the Chandler Act. An interlocutory decree is not res judicata with questions left open until the final decree. Temporary restraining order not being final, determination is also not res judicata. . . . . 23

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RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

**STATEMENT**

The statement presented by the petitioners is incom-  
plete and inadequate. It will be apparent from the read-

ing of Judge Sparks' opinion (R. 91-100), that your Honorable Court does not have presented to it all of the facts that received the consideration of the Circuit Court of Appeals.

Counsel for petitioners make mention in their brief (page 6), that "On December 27, 1943, the Christopher Engineering Company, a Missouri corporation, filed in the Bankruptcy Court in Missouri and secured the approval of its debtor petition under Chapter X of the Chandler Act. (R. 92-100.)"

Their reference is to Judge Sparks' opinion. That petition is discussed in detail in the opinion of Judge Sparks. (Record, pages 92, 3, 5.)

Since it may not be clear how, in the absence of this Christopher petition from the record, it was considered and discussed, together with other details of the Missouri case by the Circuit Court of Appeals, we explain that counsel for petitioners, in their brief for Appellants in the Court below, as addendum to their brief, filed a copy of the order approving the Christopher Debtor's petition. This opened the door to the respondent and gave him the opportunity to include in the brief for the Appellee, certified copies of the Christopher Engineering Company's Debtor petition, and of various other pleadings from the Christopher proceeding.

This explains Judge Sparks' statement that the Christopher's balance sheet annexed to its Debtor's petition "makes no mention of ownership or control of any stock of the National Company, although it purports to set forth a complete list of its assets and liabilities." (R. 95.)

This also accounts for Judge Sparks' discussion of the



Brown-Christopher resolution attached as an exhibit to the Christopher petition for reorganization, which was included as an exhibit in the brief of the respondent in the Court below. (R<sup>e</sup> 92-3.)

Prior to the Indiana bankruptcy proceeding, a State Court suit for receiver had been filed in Madison Circuit Court. A Receiver was appointed but did not qualify, because of a restraining order entered by the Missouri Court in the Christopher proceeding. (R. 16, 17.)

An involuntary petition in regular bankruptcy was filed on January 21, 1944, in the United States District Court for the Southern District of Indiana against National Aircraft Corporation, an Indiana corporation, whose principal place of business and all of its assets were located at Elwood, Indiana. (R. 7, 93.)

The appellant Duggan, as Trustee of Christopher (authorized by the Missouri Court, as shown by certified copy of pleadings attached to Respondent's brief below) retained Hubert Hickam, an Indianapolis attorney, who appeared before Referee Wilde in opposition to appointment of Receiver in Bankruptcy (R. 7). Hearing was had on this on January 25, 1944. Amended petition for restraining order in the Indiana Court was filed on January 27, 1944, and on February 1st, the Referee in the Indiana case entered a finding of fact and conclusions of law (R. 15-19), and restraining order thereon against the bankrupt and all other persons, from removing assets from the District. (R. 19-20.)

The findings of fact included a finding that no evidence was introduced showing that the Christopher Engineering Company, Debtor, was the owner of the capital stock of National and that while Christopher Engineering Company was shown as a creditor of National, the Christopher

interests, including J. M. Brown, A. B. Christopher and Christopher Engineering Company, were indebted to the bankrupt in the net sum of \$37,068.48 (R. 17).

No answer was filed to creditors' petition in bankruptcy in the Indiana case, and adjudication took place on February 7, 1944, without opposition. (R. 7.) On February 8th, Referee Wilde, appointed the respondent Receiver in Bankruptcy, notice being given to Mr. Hickam, attorney for petitioner Duggan, Christopher trustee, herein, and no petition for review being filed. (R. 8.)

Reverting to the opinion of Judge Sparks and the Missouri case, the opinion also reveals that on February 25, 1944, J. M. Brown, a stockholder and director of Christopher, and Secretary of National, filed verified petition in the Christopher case, alleging that he was the owner of 288½ shares of no par value of stock of National (R. 95); that this stock was pledged as collateral security for a loan of \$6,000.00, to B. Sherman Landau, attorney for Brown, when the latter filed his National petition for reorganization in Missouri (R. 95-96). Landau filed a separate petition on the same date, alleging substantially the same facts. (R. 96.) The opinion also discloses that A. B. Christopher filed his petition on the same date in the Missouri proceeding, alleging his ownership of 288½ shares of National stock (R. 96).

Joseph M. Brown, Secretary-Treasurer of National, the bankrupt, attended first meeting of creditors in Indiana Court on March 7, 1944. He testified that he and Christopher purchased and owned the stock of National Aircraft Corporation and that he knew of no reason why the stock should be considered property of Christopher Company (R. 6). There is a finding of fact to that effect in the

Referee's certificate (R. 12), in the order of the Referee approving the sale (R. 35), and the testimony is also mentioned in the opinion of Judge Sparks (R. 97).

At this first meeting, Brown estimated the National liabilities at \$429,000. The assets were given as \$126,569.49 and he testified that it appeared to him the concern was insolvent. (R. 6-7.) Brown's testimony at the first meeting was given in the presence of Noah Weinstein and B. Sherman Landau, attorneys, in connection with the petition Brown filed for reorganization of National, and Attorney O'Neill of Anderson. No objection was presented to the election of a Trustee. (R. 7.) A draft of a plan to sell the assets to a new Indiana corporation, in which Brown would be the moving spirit, was submitted through the attorneys. The Referee pronounced this as unlawful, inequitable and offering no security to creditors. (R. 7.)

The respondent, as Trustee of National, filed petition for sale of the real and personal property of the bankrupt on March 21, 1944. Referee Wilde, in order to give all parties an opportunity to be heard, entered order for a meeting of creditors on April 4, 1944, for the purpose of considering this petition, directing that creditors and other parties in interest appear and show cause, if any they have, why the petition should not be granted and order of sale entered. Notices were sent to Duggan, Trustee for Christopher, and to Attorneys for Brown, Secretary-Treasurer of National. (R. 8, 25-26.) Neither Duggan nor Brown appeared and no objection was made to entering order of sale. (R. 8.) The order of sale was entered April 6, 1944, and provided for employment of auctioneer. Notice of the entering of this order was sent to all interested parties, including Duggan, Trustee, and Brown on April 10th. No petition for review was filed (R. 9, 28-32). Upon the

entry of the order of sale and employment of auctioneer, the respondent, as Trustee, and his Attorneys and the Auctioneer employed by him, and other persons who had been employed to help preserve and protect the property of the bankrupt, commenced intensive preparation for the sale, and very considerable expense was incurred in connection with lotting and parceling the personal property, advertising in newspapers in nine different cities, and printing and mailing 3,700 circulars sent to prospective purchasers by the auctioneer. (R. 9.)

The subsidiary petition in the name of National Aircraft was not filed in St. Louis until April 19, 1944, the day before the time fixed for sale, April 20th, and was not served until 9:30 A. M., at the very hour of the beginning of the sale. (R. 4.) As there were between 300 and 400 prospective purchasers present, the sale was conducted and the aggregate bids were in excess of \$55,000, greatly in excess of the appraisement of \$45,000, approximately \$9,000, and \$16,000 in excess of the value fixed by Brown. (R. 2-3, 10.)

Hearing upon the report of sale was set for April 25, 1944, and order entered requiring Duggan, Trustee of Christopher, Brown, and all other interested parties, to appear and show cause why the sale should not be approved, and copies of the same were sent to them. (R. 10-11, 36.)

Duggan and Brown did not appear and the hearing was continued until May 2nd (R. 11). On May 3rd, the order of sale was entered, no cause having been shown why said report of sale should not be approved and sales to high bidders confirmed. (R. 3.) The sales of the property were made in accordance with the orders of the Referee. (R. 13.)

Since the appointment of the Respondent, first as Receiver and then as Trustee, several thousand dollars have been expended in preserving the assets and property of the bankrupt, and in preparing the same for sale and in effecting the sale. (R. 13.)

Prior to the filing of petitions for review, no petitions or other pleadings had been filed in the Indiana case by Duggan, Trustee, or by Brown or the Christopher interests, or by the bankrupt. (R. 13.) The respondent, first as Receiver, then as Trustee, was in full and complete charge of the assets of the bankrupt since February 8, 1944, with no assertion of alleged rights of the petitioners until just before the sale. (R. 36.)

There was also included in the exhibits of certified copies of pleadings in the Christopher proceeding in Respondent's brief below, copy of Plan of Reorganization in Christopher case, filed on March 22, 1944, signed only by Brown as stockholder, and making no mention therein of National stock.

In addition to the pleadings included as exhibits in the brief below there was brought to the attention of that Court by a duly certified copy, proof of claim filed by Brown with the Referee in Indiana, the jurisdictional question being reserved. This had attached as Exhibit an assignment of 288½ shares of National stock by Christopher to Brown, dated April 1, 1944.

There is a definite finding of fact by the Indiana Referee that the capital stock of National was the property of Brown and Christopher and that National was not a subsidiary of Christopher (R. 12); also that National was insolvent. (R. 12.)

## ARGUMENT

### I

#### *As to the Facts*

We have set forth the facts as fully as we have, because we are of the opinion when they are completely known, your honorable Court will realize here is a situation, factually as well as legally, that does not entitle petitioners to the requested writ.

In the first place, they are not so entitled because they have not presented to your court all that the Seventh Circuit Court of Appeals had before it and properly took into account in rendition of its decision. (R. 92, 93, 95, 96, 97.) And as Judge Sparks states, they are "undisputed facts." (R. 92.)

In Indiana, on March 7, 1944, at the first meeting of creditors, Brown, Secretary-Treasurer of National swore that he and Christopher individually owned the stock of National and that he knew of no reason why the stock should be considered property of Christopher Company. (R. 6, 12, 35, 97.) Brown, Christopher and Landau, Brown's attorney, filed petitions to the same effect as to individual ownership in the Missouri Court on February 25, 1944. (R. 94, 95, 96.) This is not controverted in any particular until the allegation in the National reorganization petition on April 19, 1944. (One was true and one false or there was a change of ownership in the interim.)

There was a definite finding of fact as to the individual stock ownership and that National was not a subsidiary of Christopher. (R. 12, 35.) Southern District Judge Baltzell approved the finding and order of the Referee confirming sale on June 5, 1944. (R. 68.)

### *Binding Effect of Findings*

The findings of a Referee, approved and affirmed by the District Judge, are binding upon the Circuit Court of Appeals, except in the event they are clearly erroneous.

In re Peoria Braumeister Co., 138 F. (2d) 520, 3, (C. C. A. 7th, 1943);

In re Wellin, 132 F. (2d) 262, 4 (C. C. A. 7th, 1942);

Brown v. Freedman, 125 F. (2d) 151 (C. C. A. 1st, 1942);

In re Newman, 94 F. (2d) 108, 111 (C. C. A. 6th, 1938);

In re Hoff, 101 F. (2d) 334 (C. C. A. 7th, 1939);

In re Rosenberg, 138 F. (2d) 409 (C. C. A. 7th, 1943);

Springman v. Gary State Bank, 124 F. (2d) 678 (C. C. A. 7th, 1941);

In re Penfield Distilling Co., 131 F. (2d) 694 (C. C. A. 6th, 1942);

General Order 47, 52(a), Rules of Civil Procedure.

### *No Writ to Review Evidence*

This Court does not grant a certiorari to review evidence, but accepts the concurrent findings of two lower courts. (Here there were three courts, Referee, District, Circuit Court of Appeals.) The rule is thus stated:

"On the questions of fact, both courts below decided against the petitioners. Under the well established rule, this court accepts the finding in which two courts concur, unless clear error is shown."

Washington Securities Co. v. United States, 234 U. S. 76, 78;

Texas & N. O. R. Co. v. Brotherhood Ry. & S. S. Clerks, 281 U. S. 548, 558;

Virginia Ry. Co. v. System Fed., 300 U. S. 515, 542;



Capital Transportation Co. v. Cambria Steel Company, 249 U. S. 334, 5.

Such clear error has not been shown and does not exist. The Indiana Court had the right to determine the facts by the evidence. Even in the Missouri Court, individual ownership of stock had been asserted.

### **REFEREE'S ORDERS RES JUDICATA**

As appears from the statement of the case, there was no review taken from the restraining order entered in the Indiana case on February 1, 1944, from the adjudication, from appointment of Receiver, from the appointment of Trustee or from the order of sale or denial of stay. (R. 13.)

The orders of the Referee in Bankruptcy, if not reviewed within the time and in the manner prescribed, have the force and effect of judgments and orders of the court and are res judicata.

In re Tinkoff, 85 F. (2d) 305, 7 (C. C. A. 7th, 1936),  
32 Am. B. R. (ns) 45;

Clark v. Milens, 28 F. (2d) 457 (C. C. A. 9th, 1928),  
13 Am. B. R. (ns) 19;

In re Sterling, 125 F. (2d) 104 (C. C. A. 9th, 1942),  
48 Am. B. R. (ns) 468;

U. S. ex rel. Woods v. Mayer, 4 F. Supp. 653 (D. C. Wash., 1933), 24 Am. B. R. (ns) 98.

### **ESTOPPEL**

The petitioners, and each of them, by their course of conduct in connection with the proceedings in the Indiana Court were estopped from preventing confirmation of sale of assets, pursuant to the order of that court.

In re Walton Hotel Co., 116 F. (2d) 110 (C. C. A. 7th, 1940);

Lebold v. Inland Steel Co., 125 F. (2d) 369 (C. C. A. 7th, 1941);

Augustus v. New Amsterdam Casualty Co., 100 F. (2d) 581, 7 (C. C. A. 7th, 1939);

Clark v. Milens, 28 F. (2d) 457, 13 Am. B. R. (ns) 19 (C. C. A. 9th, 1928);

Clinton Trust Co. v. John H. Elliott Leather Co., 132 F. (2d) 299, 304 (C. C. A. 2nd, 1942).

### AS TO JURISDICTION

There is, in the first place, the question of fact whether National is a subsidiary of Christopher. Referee Wilde, passing on the question on the evidence heard by him, the only basis on which a Court can judge, has found it was not. (R. 12.) His finding and order were approved by the District Judge and affirmed by the Circuit Court of Appeals. Since it was not a subsidiary, the Missouri Court, in no event, would have jurisdiction over it and the expressions of the Circuit Judges that it must have been one earlier than April 19, 1944, are pertinent, in the absence of a showing contradicting the individual claims in that case and the testimony in Indiana.

The appropriate sections of the Chandler Act have been properly construed by Judge Sparks. The correct interpretation has been placed upon Section 129 of the Chandler Act (11 U. S. C. A. 529). It does not, in the event of pending bankruptcy, contemplate or permit the filing of ~~even~~ a genuine subsidiary's petition under Chapter X in a Court where the real parent corporation is undergoing reorganization. The Court where the regular bankruptcy proceeding is pending, is the sole tribunal for a subsidiary under such circumstances. A transfer can then be asked if deemed desirable and granted if the Court approves.

We hold no brief for the majority Judges below, personally, except as naturally we desire their view to prevail and be accepted by your honorable Court. But opposing counsel are undignified, if not offensive, when they say on page 27 of their brief that "one of the concurring Judges below tried to *make a play* (our italics) on the adjective 'original' in Section 129."

They ignore the fact that it is also used in Section 128.

As has been truly said by Judge Sparks of Sections 526-529, 11 U. S. C. A. "they should be construed together." (R. 98.) Reading them together, as shown in the note (R. 98) particularly if the Section divisions are ignored, the construction placed upon them by Judge Sparks' opinion is inescapable and inevitable.

Petition has been defined, as stated by opposing counsel, to mean a petition filed under Chapter X. (11 U. S. C. A. Sec. 506-5.) However, it also means "a document filed in a court of bankruptcy or with a clerk thereof, by a debtor praying for the benefits of this act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named." (Sec. 1 (24) Chandler Act.)

If, as suggested by opposing counsel, it meant a first or original petition under Chapter X, it would have said in Sec. 126 (11 U. S. C. A. 526) "file an original petition under this Chapter." That it did not do so is significant, as is also the non-inclusion of the word original in Section 127 (11 U. S. C. A. 527). The first petition under Chapter X, in the logic of the petition, would have been an original one.

Opposing counsel request approval of their doubtful attempt to construe the Sections. The Congressional intent is plain and their hangover reference is flippant. As

a matter of fact "original" is used as contrasted with action in a regular bankruptcy proceeding in 77b(a) of the Bankruptcy Act. They suggest the courts eliminate by construction what is a clear legislative intent.

Section 102 (11 U. S. C. A. 502) also contains the word "original", applying it to Section 128 (11 U. S. C. A. 528), namely, where no prior bankruptcy is pending.

Section 238 (11 U. S. C. A. 638) provides for an order contemplating the reinstatement and conduct of the regular bankruptcy proceeding, something that could only be properly done by the court in which the reorganization proceeding was pending.

We have found two cases considering the word "original" in its application to petitions for corporate reorganization.

These are

*In re Paramount Publix Corporation*, 85 F. (2d) 42 (C. C. A. 2nd, 1936);

*Clark Brothers Co. v. Portex Oil Co.*, 113 F. (2d) 45, 7 (C. C. A. 9th, 1940).

In the case of,

*In re Paramount Publix Corporation*, 85 F. (2d) 42 (C. C. A. 2d, 1936),

Judge L. Hand considers the word "original" as applied to petition under 77-B. He says (on page 44):

"Subdivision (a) of section 77B (11 U. S. C. A. sec. 207 (2)) provides for three situations: 'An original petition'; 'an answer' in bankruptcy before adjudication; 'a petition' before or after adjudication 'in any proceeding pending in bankruptcy.' Why the debtor should have the alternative of answer or petition before adjudication, or whether there is any but a nominal difference, we need not inquire. What is import-

ant is that 'an original petition' is contrasted with a petition or answer in a 'proceeding pending in bankruptcy.' When either of these is so interposed, reorganization becomes an amplification or new end product of the original bankruptcy, just as though the bankrupt or the alleged bankrupt had proposed a composition, of which indeed reorganization is a variant and an outgrowth, and on the basis of which its constitutionality was upheld.

The word original, as applied to a petition under Chapter X, is also construed in the case of *Clark Brothers Co. v. Portex Oil Company*, 113 F. (2d) 45, 47 (C. C. A. 9th, 1940). Judge Mathews says:

"Original jurisdiction of proceedings under chapter 10 (sections 101-276) of the Bankruptcy Act is vested in courts of bankruptcy, including, of course, the district courts of the United States. The Oregon court, being a district court of the United States, is a court of bankruptcy.

A proceeding under Chapter 10 may be commenced (1) by filing a petition in a pending bankruptcy proceeding. (2) By filing an original petition. In this case, there was no pending bankruptcy proceeding. Hence, the debtor could and did file an original petition."

### THE CLEAN HANDS DOCTRINE

Another reason why the writ should not be granted is that the petitioners have not come into Court throughout this case with clean hands. That is particularly true as to Brown, petitioner for National, and the Trustee stands in his shoes.

Courts of Bankruptcy are essentially Courts of equity and their proceedings inherently proceedings in equity.

*Pepper v. Litton*, 308 U. S. 295, 304.

It is elementary that one must come into a Court of equity with clean hands, something not true in the case of the petitioners.

Ford v. Buffalo Colliery Co., 122 F. (2) 555, 563, (C. C. A. 4th, 1941);

Keystone Driller Company v. General Excavator Company, 290 U. S. 240, 4.

Moreover, a litigant coming into a court of equity must keep his hands clean throughout the litigation.

American Insurance Co. v. Scheffler, 129 F. (2) 143, 8 (C. C. A. 8th, 1942).

## CONSIDERATION OF QUESTIONS PRESENTED

### A

Under this letter, petitioners state the question to be whether the order of the Missouri Court is res-judicata on collateral attack or when questioned in the prior bankruptcy proceeding. The real situation was that they attacked the confirmation of sale and sought to assert the Missouri order as the basis for stopping the sale properly ordered by the Indiana Court. Such being the case, there was the right to pass upon the jurisdiction of the Missouri Court and finding there was none, approve the sale and affirm Referee and District Court.

The Circuit Court of Appeals has correctly held in this respect and there is no right to the requested writ.

We do not regard the cases counsel cite as showing that they are entitled to such consideration. We shall consider some of them in detail.

Under the discussion of question A, opposing counsel cite,

Chicot Co. Drainage Dist. v. Baxter State Bank, 308 U. S. 371, 84 L. Ed. 329.

The Court (Chief Justice Hughes) says in that case (p. 375): "We appropriately *confine* (our italics) our consideration to the question of *res judicata* as it now comes before us."

On the same page, it is stated:

"The answer in the present suit alleged that the plaintiffs (respondents here) had notice of this proceeding and were parties, and the evidence was to the same effect, showing compliance with the statute in that respect. As parties, these bondholders had full opportunity to present any objections to the proceeding, not only as to its regularity, or the fairness of the proposed plan of readjustment, or the propriety of the terms of the decree, but also as to the validity of the statute under which the proceeding was brought and the plan put into effect. Apparently no question of validity was raised and the cause proceeded to decree on the assumption by all parties and the court itself that the statute was valid."

Need we remind the Court that the St. Louis proceeding was *ex parte* and without notice, and without final decree? The parties were not brought before them as in the *Chicot* case.

In the case of,

United States v. United States Fidelity & Guaranty Company, 309 U. S. 512, 84 L. Ed. 894.

Justice Reed, discussing the *Chicot Drainage District v. Baxter State Bank* case says (on p. 514):

"In the *Chicot County Drainage Dist. Case* no inflexible rule as to collateral objection in general to judgments was declared. We explicitly limited our examination to the effect of a subsequent invalidation of the applicable jurisdictional statute upon an existing judgment in bankruptcy. To this extent the case definitely extended the area of adjudications that may



not be the subject of collateral attack. No examination was made of the susceptibility of such objection to numerous groups of judgments concerning status, extra-territorial action of courts, or strictly jurisdictional and quasi-jurisdictional facts."

In connection with the *Chicot* case, *Stoll v. Gottlieb*, 305 U. S. 165, is cited, but not quoted. In the latter case (on page 172), Mr. Justice Reed says:

"When an erroneous judgment, whether from the court of first instance or from the court of final resort, is pleaded in another court or another jurisdiction the question is whether the former judgment is *res judicata*. After a Federal Court has decided the question of the jurisdiction over the parties *as a contested issue*, the court in which the plea of *res judicata* is made has not the power to inquire again into that jurisdictional fact. We see no reason why a court, *in the absence of an allegation of fraud in obtaining the judgment*, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject matter of the litigation. In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction. (Our italics.)

"Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. *After a party has his day in court, with opportunity to present his evidence and his view of the law*, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined."

There was no contested issue in the *Missouri* case; the respondent did not have his day in court and there are patent inferences and evidence of fraud in obtaining the order.

On the other hand, the petitioners had their day in the Indiana Court, have contested the issue, and the Indiana Court, having the same right to determine its jurisdiction, has decided against them in Referee and District Courts, now affirmed by Circuit Court of Appeals.

Petitioners' counsel have also cited,

Kalb v. Feuerstein, 308 U. S. 433, 84 L. Ed. 370, a conflict between state and Federal jurisdiction.

This case contains this very interesting statement respecting the Bankruptcy Law (p. 438):

"It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally."

The Chandler Act specifically provides in Section 149, 11 U. S. C. A. 549, that the jurisdiction under Chapter X is not conclusive until the order becomes final, something neither shown nor done.

In the case of,

Caterpillar Tractor Co. v. International Harvester Company, 120 F. (2d) 82,

also cited by opposing counsel under Question A, the court says, on page 84:

"The general principle back of the rules of res judicata has received recent and clear statement by the Supreme Court. 'Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest.

and that matters once tried shall be considered forever settled as between the parties." Baldwin v. Iowa State Traveling Men's Association (1931), 283 U. S. 522, 525, 51 S. Ct. 517, 518, 75 L. Ed. 1244. A litigant is to have his day in court, but only one day in court, against another."

The respondent, without notice, on ex parte hearing on the eve of the sale ordered by the Indiana Court, did not have his one day in the Missouri Court.

In quoting from Pen-Kan Gas & Oil Co. v. Gas Co. (C. C. A. 6th), 137 F. (2d), 871, 9, counsel did not include the preceding sentence which reads, "There is no principle of law better settled than that every act of a court of competent jurisdiction shall be presumed to have been rightly done *until the contrary clearly appears.*" (Our italics.)

That this clearly appears is manifest from the discussion of the Missouri case in Judge Spark's opinion. (R. 93-96.)

The case of In re Park Beach Hotel Bldg. Corporation, 96 F. (2d) 886, 891 cited by opposing counsel, deals with a prior state court receiver. It indicates there would have been no right to deal summarily with an adverse claimant. While a state court receiver could not be such, a Trustee in bankruptcy of a corporation with its stock owned by individuals, as decided in Indiana, not by the alleged parent corporation, is definitely an adverse claimant.

## B

Under this letter, item 1, the question as presented by petitioners is, does the Court in which the regular bankruptcy proceeding is pending have the authority to entertain a collateral attack on the judgment and interpret jurisdiction of the other court, thereby denying full faith and credit? The real question again is, where the order of

the alleged reorganization proceeding is presented in opposition to approval of sale in the bankruptcy court, does not that court have the right to question and pass upon the jurisdiction of the other court?

As to point 2, the real question was whether the Court below had the right to determine from the record and extrinsic evidence, if need be, that the National was not a subsidiary, within the meaning of the Bankruptcy Act, at the essential time.

As to both, the Circuit Court of Appeals has determined correctly and there is no right to or need for the writ.

In support of their position, under question B, counsel for petitioners cite,

Milliken v. Meyer, 311 U. S. 457, 85 L. Ed. 278.

The opinion of Mr. Justice Douglas in that case contains the following expression:

"Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is, of course, open to inquiry. *Grover & B. Sewing Mach. Co. v. Radcliffe*, 137 U. S. 287, 34 L. Ed. 670, 11 S. Ct. 92; *Adam v. Saenger*, 303 U. S. 59, 82 L. Ed. 649, 58 S. Ct. 454. But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.' *Adam v. Saenger*, *supra* (303) U. S. at p. 62, 82 L. Ed. 651, 58 S. Ct. 454."

That is precisely what the majority Judges did here. The want of jurisdiction over the person and subject matter was open to their inquiry and "by the record itself," they determined there was no jurisdiction.

## C

The question presented under C, item 1, is whether a subsidiary can file a Chapter X proceeding in the pending parent proceeding after it is in regular bankruptcy in another District. This has been correctly answered by the Circuit Court of Appeals, construing the appropriate sections of the Chandler Act, as a whole. It cannot.

In point 2, under C, there is the question raised of an automatic stay, while contending for an express one. Again the question of jurisdiction, factual and legal, determines and has been correctly decided by the Court below.

The case of *Warder v. Brady*, 115 F. (2d) 89 (C. C. A. 4th, 1940), cited on page 22 of petitioners' brief, under division C, is included with reference to comity. This deals, however, with a prior State Court receivership. There was no subsidiary involved and no conflict of jurisdiction of bankruptcy courts:

However, this case points out (page 93) that the power of the Judge to stay or enjoin is until final decree, hence temporary and makes mention of exercising "original jurisdiction."

A more important phase of this case, moreover, is the expression as to the necessity for plenary suits against an adverse claimant. The Court says (page 94):

"It does not follow, however, that the jurisdiction of the bankruptcy court over suits against an adverse claimant may be summarily exercised. The statute does not so provide, and under the well established procedural rule of the ordinary bankruptcy courts, as we have seen, suits by a trustee to recover property from an adverse claimant in possession must take the form of a plenary action. This is especially true when the title to property is in dispute."

National Aircraft Corporation, with its stock owned by individuals, is a very different corporation than one whose stock was owned by Christopher Company, is not a subsidiary, and respondent, as its trustee in bankruptcy, is an adverse claimant.

It is a matter of much surprise to us that opposing counsel have cited *Williams v. North Carolina*, which they say is not yet reported. This case is found in Vol. 89, No. 15 of U. S. Supreme Court Law. Ed. Advance Opinions, page 1123.

The opinion of Mr. Justice Frankfurter, mentioned by counsel, gives consideration to the "full faith and credit clause" of the Constitution and cases construing the same. Citing the case of *Thompson v. Whitman*, 18 Wall. (U. S.) 457, as considering the early case of *Mills v. Duryee*, 7 Cranch (U. S.) 481, it is said, "*Thompson v. Whitman* made it clear that the doctrine of *Mills v. Duryee* comes into operation only when, in the language of Kent, 'the jurisdiction of the court in another state is not impeached, either as to the subject matter or the person.' Only then is the record of the judgment entitled to full faith and credit."

On page 1126, the opinion states:

"A judgment in one State is conclusive upon the merits in every other State, but only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment.

"It is too late now to deny the right collaterally to impeach a decree of divorce made in another State, by proof that the court had no jurisdiction, even when the record purports to show jurisdiction. It was 'too late' more than forty years ago." \* \* \*

"It is one thing to reopen an issue that has been

settled after appropriate opportunity to present their contentions has been afforded to all who had an interest in its adjudication. This applies also to jurisdictional questions. After a contest these cannot be relitigated as between the parties." Cases cited.

"But those not parties to a litigation ought not to be foreclosed by the interested actions of others."

While it is true this case deals with the delicate subject of divorce and the public interest therein of the States, the social question of marriage and divorce is akin to the business question of bankruptcy and corporate reorganization and the matter of jurisdiction and domicile are important, too, in the business world in this connection.

The opposition have dealt much with the term "full faith and credit."

In the case of *Cole v. Cunningham*, 133 U. S. 107, 112, Chief Justice Fuller, after quoting these sections of the Constitution, said:

"This does not prevent an inquiry into the jurisdiction of the court, in which a judgment is rendered, to pronounce the judgment nor in the right of the State to exercise authority over the parties or the subject matter, nor whether the judgment is founded in, and impeachable for, manifest fraud."

#### AS TO RES JUDICATA

We submit the following authorities as controverting the position of opposing counsel that the order of the Missouri Court was *res judicata* and could not be questioned by the Indiana Court and its action approved on review and appeal:



The rules of *res judicata* are not applicable where the judgment is not a final one.

Restatement of the Law of Judgments, Sec. 41, p. 161; Sec. 42, p. 164; See appendix;

Jos. T. Ryerson & Son, Inc. v. Bullard Machine Tool Co., 79 F. (2d) 192 (C. C. A. (2d) 1935);

G. & C. Merriam v. Saalfeld, 241 U. S. 22, 60 L. Ed. 868, 872;

National Liberty Ins. Co. of America v. Police Jury, 96 F. (2d) 261, 3 (C. C. A. 5th, 1938);

L. E. Waterman & Co. v. Modern Pen Co., 193 F. 242 (S. D. N. Y. 1912).

The order entered by the Missouri Court had not become final and was therefore not a conclusive determination as to jurisdiction.

Sec. 149 Chandler Act, 11 U. S. C. A. 549;

Sec. 161 Chandler Act, 11 U. S. C. A. 561;

Vol. 10, Remington on Bankruptcy, Sec. 4404.

An interlocutory decree is not *res judicata* between the same parties as to the same litigation, with questions left open until the final decree.

Individual Drinking Cup Co. v. Errett, 297 F. 733, 741 (C. C. A. 2nd, 1924);

Schaffran v. Mt. Vernon Woodbury Mills, 70 F. (2d) 963, 5 (C. C. A. 3rd, 1934);

Hunt v. Seeley, 115 F. (2d) 205 (C. C. A. 5th, 1940);

DeForest Radio Telephone & Telegraph Co. v. Westinghouse Elect. & Mfg. Co., 13 F. (2d) 1014, 6 (D. C. E. D. Pa., 1924).

A question does not become *res judicata* until it is settled by final and conclusive adjudication.

American National Insurance Co. v. Yee Lim Shee, 104 F. (2d) 688 (C. C. A. 9th, 1937).

A temporary restraining order is not a final determination, which renders the issue involved *res judicata*.

Santowsky v. McKey, 249 F. 51 (C. C. A. 7th, 1918);

Bohler v. Calloway, 267 U. S. 479 (1924), 69 L. Ed. 745, 749, 750.

A judgment is always subject to collateral attack when it is sought to be enforced; if the court rendering it did not have jurisdiction.

Nardi v. Poinsett, 46 F. (2d) 347 (N. D. Ind., 1931);

Petition of Taffel (D. C. S. D. N. Y., 1941), 49 F. Supp. 709;

Restatement Law of Judgments, Sec. 11, p. 65, Sec. 12, p. 69, Sec. 5, p. 25.

In the case of,

Wright v. City National Bank & Trust Co., 104 F. (2d) 285, 7 (C. C. A. 6th, 1939).

the Court says:

"The order confirming a plan of reorganization is not the equivalent of a judgment and is no more than a step in the administration of the debtor's estate and does not terminate the jurisdiction of the Court."

To the same effect, see,

In re Deep Rock Oil Corporation, 113 F. (2d) 266, 9 (C. C. A. 10th, 1940).

### ORDER INTERLOCUTORY

That the restraining order was interlocutory and the Missouri order itself not final is clear from the cited provisions of the Chandler Act, such as Sec. 116 (4) (11 U. S. C. A. 516 (4)); Sec. 149 (11 U. S. C. A. 549); Sec. 161 (11 U. S. C. A. 561); Sec. 137 (11 U. S. C. A. 537).

This is also set forth in Remington on Bankruptcy, Vol. 10, Sec. 4404. This recognized text writer says:

"Section 149 of the Bankruptcy Act provides that 'an order which has become final, approving petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of this court.'

"The use of the word 'final' indicates that the first order of approval (under either Section 141, or Sections 142 and 143, 11 U. S. C. A. Sections 541 through 543), is to be considered interlocutory in its nature, until the expiration of the time prescribed by Section 137, (11 U. S. C. A. Sec. 537) for the filing of an answer (one or many) under Section 144."

Section 161 of the Chandler Act, 11 U. S. C. A., Section 561, provides:

"Sec. 161. The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate."

There is no showing that this Section was complied with, and any notice given and subsequent hearing had. In the absence, therefore, of such acts and such showing the order did not become final, and therefore there was no conclusive determination of the jurisdiction of the Missouri Court, so that there is not the finality which would justify the application of the doctrine of *res judicata*, or objection on the score of collateral attack.

Petitioners' brief gives the final date for the Missouri Court's order as May 19, 1944. We do not know how this

is arrived at, as the necessary succeeding steps are not shown as having been taken. It is, however, concededly not final on May 3, 1944, when the Referee approved the sale, his action as of that date being subsequently affirmed by District Court and Circuit Court of Appeals.

### INTERLOCUTORY INJUNCTION

The Rules of Civil Procedure, applicable to interlocutory injunctions, were not observed by the Missouri Court and, in that connection, we cite the following:

In granting, or refusing interlocutory injunctions, the court shall set forth findings of fact and conclusions of law.

Rule 52 (a), Rules of Civil Procedure;

Shannon v. Retail Clerks International Protective Association, 128 Fed. (2d) 553, 5 (C. C. A. 7th, 1942);

Bowles v. Russell Packing Co., 140 F. (2d) 354, 5 (C. C. A. 7th, 1944);

Brown v. Quinlan, Inc., 138 F. (2d) 228, 9 (C. C. A. 7th, 1943);

Perry v. Baumann, 122 F. (2d) 409 (C. C. A. 9th, 1941).

Temporary injunction, or restraining order shall not issue without notice, unless it is shown by affidavit, or verified complaint, that immediate and irreparable loss will result, and the order must so provide and explain why granted without notice. Such order, unless renewed, expires within ten days.

Rules 65 (a), (b), (c) and (d), Rules of Civil Procedure;

Shannon v. Retail Clerks International Protective Association, 128 F. (2d) 553, 5 (C. C. A. 7th, 1942);

Southard & Co. Ltd. v. Salinger, 117 F. (2d) 194, 5 (C. C. A. 7th, 1941).

In the case of,

Southard & Co. Ltd., v. Salinger, 117 Fed. (2d) 194,  
5 (C. C. A. 7th, 1941),

Judge Briggie, dissenting Judge in the case at bar, says:

"Rule 65 of the Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c, which is substantially the same as Section 381 of 28 U. S. C. A., in reference to preliminary injunctions and temporary restraining orders, provides that 'every temporary restraining order granted without notice \* \* \* shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes \* \* \*.' The restraining order in question did not provide any time for its expiration and, therefore, in all events, expended its force after the expiration of ten days from its entry, May 29, 1940. Indeed, the Court was without power to give it vitality for a longer period, except upon certain conditions not here present."

*.. Right to Inquire Into Jurisdiction*

The right to inquire into jurisdiction, when the benefit of proceedings in other courts is asserted, is set forth in the following cases from which we quote: In the case of,

Old Wayne Mutual Life Association v. McDonough,  
204 U. S. 8,

Mr. Justice Harlan said (p. 15):

"The constitutional requirement that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no state can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are wanting in the due process of law enjoined by the fundamental law. 'No judgment of a court is

due process of law, if rendered without jurisdiction in the court, or without notice to the party.' *Scott v. McNeal*, 154 U. S. 34, 46, 38 L. Ed. 896, 901, 14 Sup. Ct. Rep. 1108. No state can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment or decree in a court of one state is questioned in a court of another government, Federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it. \* \* \*

"Chief Justice Marshall had long before observed in *Rose v. Himely*, 4 Cranch, 241, 269, 2 L. Ed. 608, 617, that, upon principle, the operation of every judgment must depend on the power of the court to render that judgment. In *Williamson v. Berry*, 8 How. 495, 540; 12 L. Ed. 1170, 1189, it was said to be well settled that the jurisdiction of any court exercising authority over a subject 'may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings.'"

In the case of,

*Wetmore v. Karrick*, 205 U. S. 141,

Mr. Justice Day says (on page 148):

"Before taking up the case in detail it must be regarded as settled by previous decisions of this court that, where an action is brought to recover upon a judgment, the jurisdiction of the court rendering the judgment is open to inquiry. And the constitutional requirement as to full faith and credit in each state to the public acts, records, and judicial proceedings of every other state does not require them to be enforced if they are rendered without jurisdiction, or otherwise wanting in due process of law. This principle was so lately asserted by a decision in this court as to render unnecessary more than a reference to the considera-

tion of the subject in *Old Wayne Mut. Life Asso. v. McDonough*, decided on January 7, 1907, of the present term."

In the case of,

*Commonwealth of Kentucky v. Maryland Casualty Company*, 112 F. (2d) 352, 356 (C. C.) A. 6th, 1940),

it is held:

"Appellant's contention that the judgment of the state court is immune from collateral attack is without merit. Such immunity cannot exist unless the court awarding the judgment has jurisdiction of the person and the subject matter and the lack of either may be pleaded against the judgment when sought to be enforced or when benefit is claimed under it.

Judicial proceedings in personam against one not served with legal process and not being within the jurisdiction of the court, neither appearing in person nor by attorney, are null and void. *Webster v. Reid*, 52 U. S. 437, 459; 11 How. 437, 459, 13 L. Ed. 761; *Combs v. Combs*, 249 Ky. 155, 60 S. W. (2d) 368, 89 A. L. R. 1095. When a judgment by default is impugned, whatever may affect its competency or regularity is open to inquiry in a collateral proceeding."

In the important bankruptcy case of,

*John Vallely v. Northern Fire & Marine Insurance Company*, 254 U. S. 348,

Mr. Justice McKenna says (on pages 353, 4):

"Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable but simply void, and this even prior to reversal."



### PLENARY SUIT REQUIRED

In the authoritative case of *Taubel-Scott-Kitzmiller Company v. Fox*, 264 U. S. 426, 433, it is held that "in no case where it lacked possession could the Bankruptcy Court, under the law as originally enacted, or can it now (without consent) adjudicate in a summary proceeding the validity of a substantial adverse claim."

In the equally important case of,

*Harrison v. Chamberlain*, 271 U. S. 191, 3, it is stated that:

"It is well settled that a court of bankruptcy is without jurisdiction to adjudicate in a summary proceeding a controversy in reference to property held adversely to the bankrupt estate, without the consent of the adverse claimant; but resort must be had to a plenary suit."

National Aircraft Corporation is a very different concern with individual stockholders, as it has been held to be by the Court to which the respondent is responsible, than if it were one with its stock owned by Christopher Company and a subsidiary of that debtor. The respondent is definitely an adverse claimant.

One wonders if this striving for transfer of jurisdiction does not have as its basis what has been referred to in the House of Representatives Report No. 1409, on the Chandler Act, p. 40, namely, "inside groups who may be in control of a reorganization, are able to search around for the jurisdiction in which they estimate it is less likely for a number of reasons that their conduct of the corporation will be examined and they will be exposed to liability."

In view of the reference in Judge Sparks' opinion to the execution of the reorganization petitions in *Missouri* (R. 92, 93), it is pertinent to cite *Price v. Gurney*, 89 L. Ed. 524 (U. S. Sup. Ct. Adv. Sheets, Vol. 89, No. 8), which

holds that a stockholder may not file a petition for reorganization in the name of the corporation.

We are including in the appendix, pertinent sections of the Chandler Act not contained in petitioners' appendix to their brief.

There are numerous statements in the American Law Institute's "Restatement of the Law of Judgments," which have a bearing on the points raised by the opposition, as well as the propositions asserted by us. We are including these also in the appendix to this brief.

### CONCLUSION

We have perhaps gone at too great length in connection with brief in opposition to writ of certiorari. However, we felt that giving the Court the complete picture that we have would be the surest method of obtaining a denial of the writ.

We realize that conflict between Courts is unseemly and undesirable, but it has not been of our making. We also realize that there should be an end to litigation. The petitioners were before the Circuit Court of Appeals on petition for writ of mandamus and prohibition in Cause No. 8605, 7th Circuit. They have been before the District Court on review of Referee's order and in the Circuit Court on appeal.

We sincerely trust that the respondent's presentation of the facts and the applicable law, herein set forth, will be found to entitle him to a denial of the writ.

Respectfully submitted,

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## APPENDIX

### ADDITIONAL SECTIONS OF CHANDLER ACT WITH REFERENCE TO CHAPTER X

"Sec. 102. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, That Section 23, subdivision h and n of section 57, section 64, and subdivision F of section 70, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act except where an adjudication had previously been entered. (11 U. S. C. A. 502.)

"Sec. 118. The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district, regardless of the location of the principal assets of the debtor or its principal place of business, if the interests of the parties will be best served by such transfer. (11 U. S. C. A. 518.)

"Sec. 120. Whenever notice is to be given under this chapter, the court shall designate, if not otherwise speci-

fied hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices to be given under this chapter. (11 U. S. C. A. 520.)

“Sec. 130. Every petition shall state—

“(1) that the corporation is insolvent or unable to pay its debts as they mature;

“(2) the applicable jurisdictional facts requisite under this chapter;

“(3) the nature of the business of the corporation;

“(4) the assets, liabilities, capital stock, and financial condition of the corporation;

“(5) the nature of all pending proceedings affecting the property of the corporation known to the petitioner or petitioners and the courts in which they are pending;

“(6) the status of any plan of reorganization, readjustment, or liquidation affecting the property of the corporation, pending either in connection with or without any judicial proceeding;

“(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter XI of this Act; and

“(8) the desire of the petitioner or petitioners that a plan be effected (11 U. S. C. A. 530).

“Sec. 137. Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee, or, if the

debtor is not insolvent, by any stockholder of the debtor. (11 U. S. C. A. 537.)

“Sec. 146. Without limiting the generality of the meaning of the term ‘good faith’, a petition shall be deemed not to be filed in good faith if—

“(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

“(2) adequate relief would be obtainable by a debtor’s petition under the provisions of Chapter XI of this Act; or

“(3) it is unreasonable to expect that a plan of reorganization can be effected; or

“(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding. (11 U. S. C. A. 546).

“Sec. 158. A person shall not be deemed disinterested, for the purposes of section 156 and section 157 of this Act, if—

“(1) he is a creditor or stockholder of the debtor (11 U. S. C. A. 558).

“Sec. 161. The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days’ notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate. (11 U. S. C. A. 561).

"Sec. 228. Upon the consummation of the plan, the judge shall enter a final decree—

"(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

"(2) discharging the trustee, if any;

"(3) making such provisions by way of injunction or otherwise as may be equitable; and

"(4) closing the estate." (11 U. S. C. A. 628.)

"Sec. 236. If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

"(1) where the petition was filed under section 127 of this Act, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this Act; or

"(2) where the petition was filed under section 128 of this Act, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders. (11 U. S. C. A. 636.)

"Sec. 237. Upon the dismissal of a proceeding under this chapter, where the petition was filed under section 128 of this Act, the judge shall enter a final decree discharging the trustee, if any, and closing the estate, except as otherwise provided by section 259 of this Act. (11 U. S. C. A. 637.)

"Sec. 238. Upon the entry of an order directing that bankruptcy be proceeded with—

"(1) where the petition was filed under section 127 of this Act, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 128 of this Act, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved." (11 U. S. C. A. 638.)

## SECTIONS OF RESTATEMENT OF LAW OF JUDGMENTS

"Sec. 41 (p. 161)

### REQUIREMENT OF FINALITY.

THE RULES OF RES JUDICATA ARE NOT APPLICABLE WHERE  
THE JUDGMENT IS NOT FINAL JUDGMENT.

Comment:

(a) Finality of Judgments. For the purposes of the rules stated in this Subject a judgment at law is not a final judgment if further judicial action by the court rendering the judgment is required to determine the matter litigated;



and a decree in equity is not a final judgment if further action by the court is required beyond the supervision of the carrying out of the decree."

"Sec. 42 (P. 164)

(e) Where the judgment is not final. Where a judgment has been given in an action but it is not a final judgment, it is not conclusive between the parties in a subsequent action whether based upon the same cause of action or upon a different cause of action. The judgment, if in favor of the plaintiff, will not operate as a merger of the cause of action, or, if in favor of the defendant, as a bar to another action upon the same cause of action; nor is it conclusive by way of collateral estoppel between the parties in a subsequent action on a different cause of action."

"Sec. 11 (P. 65)

#### **COLLATERAL ATTACK.**

A JUDGMENT WHICH IS VOID IS SUBJECT TO COLLATERAL ATTACK BOTH IN THE STATE IN WHICH IT IS RENDERED AND IN OTHER STATES.

"Sec. 12 (P. 69) states:

If it appears in the record that the court does not have jurisdiction to render the judgment, extrinsic evidence is unnecessary to show the invalidity of the judgment and the judgment is open to collateral attack. Where it does not appear in the record that the court has not jurisdiction, or where it affirmatively appears in the record that the court has jurisdiction, the question arises whether the record is conclusive or whether extrinsic evidence is admissible to contradict the record and to show that in fact the court did not have jurisdiction to render the judgment.

"The question whether extrinsic evidence is admissible to contradict the record and to show that the court had no

jurisdiction to render the judgment may arise where such evidence is offered in further proceedings in the original action; it may arise in equitable proceedings brought to set aside the judgment; it may arise where a collateral attack is made upon the judgment."

"Sec. 5 (P. 25) provides:

(d) The provision of Article IV, Section 1, of the Constitution of the United States that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State is not applicable where the judgment is rendered by a Court of a State which has no jurisdiction over the parties."

FILE COPY

JAN 28 1946

CHARLES ELMORE GROPLEY

IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1945

Nos. 418 and 419

JEROME F. DUGGAN, Trustee of the Estates of Christopher Engineering Company, a Corporation, and National Aircraft Corporation, a Corporation,

*Petitioner,*

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,

*Respondent.*

NATIONAL AIRCRAFT CORPORATION,  
a Corporation,

*Petitioner,*

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,

*Respondent.*

**BRIEF FOR RESPONDENT**

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NATIONAL AIRCRAFT CORPORATION,  
a Corporation,

*Petitioner,*

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,

*Respondent.*

**BRIEF FOR RESPONDENT**

These cases come before the Court on writs of certiorari granted on November 5, 1945, to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit (R. 91-105), affirming the order of the United States

District Court for the Southern District of Indiana, Indianapolis Division (R. 68), which denied petitions for review of the order of the Referee in Bankruptcy, approving the report of sale of James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation, Bankrupt, and confirming the sale of the assets of said Bankrupt (R. 34).

The sale was made pursuant to order of the Indiana Court in a pending bankruptcy proceeding (R. 28-30), after proper notice to creditors and all parties in interest (R. 8, 25-26), and was advantageous to the estate (R. 2, 14, 33-37). The day prior to the scheduled sale, National Aircraft Corporation filed a petition for Reorganization under Chapter X of the Bankruptcy Law (R. 58-61), not filing the petition in the pending bankruptcy in the Indiana Court, as authorized by Section 127 of the Bankruptcy Act (11 U.S.C.A. 527), but filing in the United States District Court for the Eastern District of Missouri, Eastern Division, as an alleged subsidiary of Christopher Engineering Company, then in reorganization proceedings in the Missouri Court (R. 92).

The opinions below held that the Indiana Court was entitled to determine that its jurisdiction to make and approve the scheduled sale was not terminated by the filing of the petition in the Missouri Court and the order (R. 61-66) entered thereon.

(For convenience, National Aircraft Corporation will sometimes herein be referred to as *National*; Christopher Engineering Company will be referred to as *Christopher*; the United States District Court for the Eastern District of Missouri, Eastern Division, will be referred to as the *Missouri Court*; the United States District Court for the Southern District of Indiana, Indianapolis Division, will be referred to as the *Indiana Court*; the Referee in Bankruptcy for the United States District Court for the Southern Dis-

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trict of Indiana, Indianapolis Division, will be referred to as the *Referee*. James C. Sansberry, Trustee of the Estate of National Aircraft Corporation, Bankrupt, may sometimes be referred to as the *Indiana Trustee*. Jeromie F. Duggan, Trustee of the Estates of Christopher Engineering Company, a corporation, and National Aircraft Corporation, a corporation, may sometimes be referred to as the *Missouri Trustee*.)

### OPINIONS BELOW

The order of the Indiana District Court (R. 68) was a memorandum opinion, adopting, approving, and affirming the findings and order of the Referee in Bankruptcy (R. 3-4). The judgment of the Circuit Court of Appeals, affirming that order, is reported in 149 F. (2d) 548 (C.C.A. 7th, 1945), and is printed in the Record of this case. (R. 91-105).

### STATEMENT OF THE CASE

The statement of the case in petitioners' brief is not complete. The clearest way to present this case to the Court is to give the complete sequence of events in chronological order:

*December 27, 1943*—Christopher Engineering Company filed petition in the United States District Court for the Eastern Division of the Eastern District of Missouri, for reorganization under Chapter X of the Bankruptcy Law (R. 92).

*January 19, 1944*—State Court Receiver appointed for National Aircraft Corporation by Circuit Court of Madison County, Indiana (R. 16). Restraining order entered in Christopher reorganization by District Court in Missouri, purporting to restrain Judge of Circuit Court of Madison County, Indiana, and plaintiff in receivership suit, and all other persons from interfering with or affecting assets of



National Aircraft Corporation (R. 16-17). Receiver delayed qualifying (R. 16).

*January 21, 1944*—Involuntary petition in Bankruptcy filed in United States District Court for Southern District of Indiana, against National Aircraft Corporation, an Indiana corporation, with its principal place of business and all its assets located at Elwood, Indiana (R. 12).

*January 25, 1944*—Hearing before Referee in Bankruptcy for United States District Court for Southern District of Indiana on application of Lilly Varnish Company, a petitioning creditor, for appointment of Receiver for National Aircraft Corporation and for restraining order (R. 15). Jerome F. Duggan, Trustee of Christopher Engineering Company, appeared by attorney, Hubert Hickam, of Indianapolis, Indiana (R. 15).

*February 1, 1944*—Order entered by Referee in Indiana Court restraining National Aircraft Corporation, its officers, employees and agents, and all other persons from removing any assets or diverting elsewhere any payments due to National Aircraft (R. 15-19). Appointment of Receiver held under advisement (R. 19). Attorneys for Duggan, Trustee of Christopher, notified (R. 19). No petition for review filed (R. 13).

*February 7, 1944*—Order of adjudication in Bankruptcy entered against National Aircraft Corporation by United States District Court for Southern District of Indiana (R. 12). No answer filed, although Duggan, Trustee of Christopher Engineering Company, had been advised of the filing of the involuntary petition in Bankruptcy (R. 12).

*February 8, 1944*—Order entered by Referee in Indiana Court appointing James C. Sansberry, of Anderson, Indiana, Receiver in Bankruptcy of National Aircraft Corporation (R. 20-22). Attorneys for Duggan, Trustee of Chris-

topher, notified (R. 8, 22). No petition for review filed (R. 8).

*March 7, 1944*—First meeting of creditors of National Aircraft Corporation, Bankrupt, held in Indianapolis, Indiana, before Referee in Bankruptcy for United States District Court for Southern District of Indiana (R. 6). Joseph M. Brown, Secretary-Treasurer of National Aircraft, testified under oath that he and A. B. Christopher, as individuals, were the owners of all the capital stock of National Aircraft and that the stock was not the property of Christopher Engineering Company (R. 6, 12). Phil O'Neill of Anderson, Indiana, Attorney for Duggan, Trustee of Christopher, was present in Court (R. 7), together with attorneys Noah Weinstein and Sherman Landau of St. Louis, Missouri, (R. 7), later of counsel for National in Missouri Court (R. 60), and they offered no objection to appointment of a Trustee (R. 7). Draft of plan to sell the assets of National to a new Indiana corporation, in which Brown would be the moving spirit, was submitted through attorney O'Neill (R. 7). Referee examined plan and pronounced it unlawful, inequitable, and offering no security to creditors (R. 7). James C. Sansberry appointed Trustee in Bankruptcy of National Aircraft Corporation (R. 13). No petition for review filed (R. 13).

*March 10, 1944*—James C. Sansberry qualified as Trustee by filing bond as required (R. 13).

*March 21, 1944*—Trustee of National Aircraft files petition for order authorizing sale of real and personal property of Bankrupt (R. 22-24).

*March 25, 1944*—Order entered calling meeting of creditors of National Aircraft for April 4, 1944, to consider Trustee's petition for sale (R. 25-26). Order provided for notice of meeting to be given to Duggan, Receiver of Chris-

topher Engineering Company, and to Pence, O'Neill and Diven, attorneys for Joseph M. Brown, Secretary-Treasurer of National Aircraft (R. 25). These notices were sent (R. 8).

*April 4, 1944*—Meeting of creditors held, pursuant to notice, to consider Trustee's petition for order of sale (R. 8). Neither Duggan, Trustee, nor Joseph M. Brown appeared (R. 8). No objection made to entering of an order for sale (R. 8).

*April 6, 1944*—Order entered by Referee in Bankruptcy of United States District Court for Southern District of Indiana directing Sansberry, Trustee, to sell the real and personal property of National Aircraft Corporation, Bankrupt, on April 20, 1944, at 9:30 A. M. (R. 28-30). Trustee authorized to employ auctioneer (R. 30).

*April 10, 1944*—Duggan, Trustee of Christopher, and Joseph M. Brown, Secretary-Treasurer of National Aircraft, notified of order of sale. (R. 9). No petition for review filed (R. 9).

*April 6, 1944, to April 20, 1944*—Sansberry, Trustee of National Aircraft, employed auctioneer and made intensive preparations for the sale (R. 9), and incurred considerable expense in lotting and parcelling, and in advertising the sale widely in newspapers (R. 9). Auctioneer sent 3700 circulars to prospective purchasers (R. 9).

*April 19, 1944*—Petition for reorganization filed in United States District Court for Eastern Division of Eastern District of Missouri, by National Aircraft Corporation, as alleged subsidiary of Christopher Engineering Company (R. 58-61). Petition signed, "National Aircraft Corporation, a corporation, by J. M. Brown, Petitioner" (R. 60). In ex parte proceeding, order entered by Missouri Court approving petition of National Aircraft Corporation, appointing Jerome F. Duggan Trustee of National Aircraft

Corporation, and purporting to restrain James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation in proceedings pending in the United States District Court for the Southern District of Indiana, from doing any act or thing affecting the property and assets of the National Aircraft Corporation (R. 61-66).

*April 20, 1944—8:00 A. M.*—Copy of Restraining Order received by United States Marshal in Indianapolis, Indiana (R. 66).

*April 20, 1944—9:30 A. M.*—Copy of Restraining Order served at Elwood, Indiana, by United States Marshal on James C. Sansberry, Trustee, and Samuel C. Winternitz & Co., auctioneers (R. 66-67).

*April 20, 1944—9:30 A. M. to 6:00 P. M.* (R. 39)—James C. Sansberry, Trustee, proceeded with sale of assets, as previously ordered by Referee in Bankruptcy for United States District Court for Southern District of Indiana, with between 300 and 400 persons attending the sale (R. 39) and sold the real estate, and the personal property in some 600 separate lots and parcels (R. 39) for a total price of approximately \$55,315.00 (R. 34), being considerably in excess of the total appraised value of approximately \$47,000 (R. 40), with all purchasers being notified that sales were subject to confirmation by the Referee at a hearing set for April 25, 1944 (R. 42).

*April 21, 1944*—Trustee files report of sale (R. 38-42). Order entered by Referee assigning matter of approval of sales for hearing on April 25, 1944, and ordering that copies of order be sent to Duggan, Trustee of Christopher Engineering Company; to J. M. Brown, c/o attorneys Pence, O'Neill and Diven; and to Hubert Hickam, attorney of record for Duggan, Trustee (R. 33-37).

*April 25, 1944*—Hearing before Referee for confirmation

of sale. No appearance by, or on behalf of, Duggan, Trustee, or National. Hearing continued until May 2, 1944 (R. 43).

*May 2, 1944*—Continued hearing before Referee, on report of sale (R. 3), with no appearance by Duggan, Trustee, and no cause shown why report of sale should not be approved (R. 3).

*May 3, 1944*—Order entered by Referee, approving and confirming sales made by Sansberry, Trustee of National Aircraft Corporation (R. 3-4).

*May 10, 1944*—Petition for Review of Referee's Order approving sale filed by National Aircraft Corporation (R. 44-47) and by Duggan, Trustee (R. 48-52). Petitions also filed for Stay pending Review by Judge (R. 47-48, 53).

*May 16, 1944*—Petitions for Review granted by Referee (R. 54-55), but petitions for stay of enforcement of order entered May 3, 1944, denied (R. 55). No appeal was taken from the order denying a stay.

*May 18, 1944*—Referee's certificate on review filed with United States District Court for Southern District of Indiana, Indianapolis Division (R. 2-15). Certificate contains finding of fact that capital stock of National Aircraft Corporation was the property of J. M. Brown and A. B. Christopher and said bankrupt corporation was not a subsidiary of Christopher Engineering Company (R. 12). Certificate also contains finding of fact that since the appointment of James C. Sansberry as Receiver in Bankruptcy and Trustee, several thousand dollars had been expended in preserving assets and property of bankrupt and in preparing them for sale, and in effecting the sale thereof (R. 13).

In addition to the proceedings mentioned, Petitioners herein filed petition for writ of prohibition and mandamus against the Indiana District Judge and Referee on May

23, 1944, in the Circuit Court of Appeals for the Seventh Circuit, the cause being No. 8065, in that Court. Exhibits Nos. 1, 4, 5, 6, 7, 8 included in Appendix B of this Brief, were included in the verified answer of the Respondent in that case. The petition was denied on June 14, 1944.

### **PERTINENT SECTIONS OF STATUTE INVOLVED**

There are ample grounds for affirming the judgment of the Circuit Court of Appeals without any necessity for statutory interpretation. But if statutory interpretation becomes necessary, the following sections of the Chandler Act are pertinent, to determine the jurisdiction of bankruptcy courts in reorganization proceedings:

*Sec. 2a.* The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created *courts of bankruptcy* and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, *with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act*, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to

(1) *Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions;* (11 U. S. C. A. 11 a).

*Sec. 112.* Prior to the approval of a petition, the *jurisdiction, powers and duties of the court and of its*

officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication. (11 U. S. C. A. 512).

*Sec. 126. A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to \$5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter.* (11 U. S. C. A. 526).

*Sec. 127. A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication of a corporation.* (11 U. S. C. A. 527).

*Sec. 128. If no bankruptcy proceeding is pending, an original petition may be filed with the court, in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction.* (11 U. S. C. A. 528).

*Sec. 129. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this Act or in the court which has approved the petition by or against its parent corporation.* (11 U. S. C. A. 529).

Against Respondent's contention, that National could not file for reorganization in the Missouri Court under Section 129, above, since its petition was not an "original petition," but could file only in the Indiana Court under Section 127, above, the Petitioners have urged consideration of the following sections:

*Sec. 148. Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure,*



or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property. (11 U. S. C. A. 548).

*Sec. 149.* An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court. (11 U. S. C. A. 549).

### THE QUESTIONS PRESENTED

The following questions are presented for the decision of the Court in this case:

1. Did the Indiana Court, having admittedly acquired jurisdiction of the assets of National Aircraft Corporation on January 21, 1944, lose that jurisdiction automatically by the ex parte order of the Missouri Court on April 19, 1944, or was it entitled to be governed by the jurisdictional facts in its own record in determining the validity of its sale of assets on April 20, 1944?

2. Did the Missouri Court have any jurisdiction at all to entertain the petition of National Aircraft Corporation for reorganization under Chapter X of the Bankruptcy Act, since it was not an "original petition" as required by Section 129 of the Bankruptcy Act (11 U. S. C. A. 529), but should have been—and could have been—filed in the Indiana Court as required by Section 127 (11 U. S. C. A. 527)?

3. Could the Missouri Trustee terminate the obviously adverse possession of the Indiana Trustee by a summary order in an ex parte proceeding, or was an application for custody or a plenary suit necessary in the Indiana Court?

4. Are the Petitioners estopped from questioning the jurisdiction of the Indiana Court, by reason of the fact that Jerome F. Duggan, Trustee for Christopher Engineer-

ing Company, appeared before the Indiana Court, by attorney making a general appearance (R. 15; see Exhibits 4 and 5 in Appendix B of this Brief, pages 72 and 73), in opposition to appointment of Receiver for assets of National Aircraft Corporation (R. 15-19), and by further reason of the fact that J. M. Brown, who signed the Missouri petition for reorganization on behalf of National Aircraft Corporation on April 18, 1944 (R. 60), had previously testified under oath in the Indiana Court that National was not a subsidiary of Christopher (R. 6, 12), with no objection being made and no petition for review being filed either by Duggan, Trustee of Christopher, or J. M. Brown, to the appointment of Receiver for National (R. 20-22), to the adjudication of National as a bankrupt (R. 12), to the appointment of Trustee for National (R. 7, 13), or to the order of sale of the assets of National (R. 8, 28-30), although both parties were notified personally or through their attorneys of record of all steps in these proceedings (R. 7, 8, 9, 12, 13, 19, 22, 25)!

### **SUMMARY OF ARGUMENT**

I. The judgment of the Circuit Court of Appeals should be affirmed, because the Indiana Court had the right to determine, from the facts in its own record, that it had jurisdiction to confirm the sale of assets of National Aircraft Corporation, made on April 20, 1944.

A. The Indiana Court acquired valid jurisdiction of National Aircraft Corporation on January 21, 1944, through involuntary bankruptcy proceedings, since the reorganization proceeding of Christopher Engineering Company in the Missouri Court, begun December 27, 1943, did not carry with it the reorganization of any subsidiary or alleged subsidiary not joined therein.

B. The order of the Missouri Court on April 19, 1944,

did not terminate the jurisdiction of the Indiana Court, since the record of the Indiana Court contained direct evidence and findings of fact that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company, and therefore, the Indiana Court could find that the Missouri Court had no jurisdiction to approve National's petition for reorganization, filed under Section 129 (11 U. S. C. A. 529) as a subsidiary of Christopher.

C. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana order approving the sale, and therefore it was subject to attack when asserted in opposition to that order.

D. Petitioners' claim that the judgment of the Missouri Court was res judicata has no basis in fact, because Respondent was never before the Missouri Court.

II. Even if it should be determined that National was a subsidiary of Christopher, the judgment of the courts below should be affirmed, because the Missouri Court had no jurisdiction to approve National's petition for reorganization.

A. A subsidiary corporation can file petition for reorganization in the court which has approved the reorganization petition of its parent corporation, only if it is an "original petition."

B. Under the proper construction of Section 129, given in the court below, an "original petition" can be filed only when there is no pending bankruptcy proceeding by or against the corporation.

C. Section 129 is far more than a mere venue statute, but is jurisdictional in its nature.

D. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana Order approv-

ing the sale, and therefore it was subject to attack when asserted in opposition to that order.

III. The judgment of the Circuit Court of Appeals should be affirmed, because the title and custody of the Indiana Trustee, acting under the order of the Indiana Court, could not be terminated by a summary proceeding in the Missouri Court.

A. The Missouri Court had no jurisdiction to adjudicate in a summary proceeding a controversy over property held adversely to the claim of the Missouri Trustee.

B. The Indiana Trustee had a very substantial adverse claim, and was entitled to a plenary suit.

IV. The judgment of the Circuit Court of Appeals should be affirmed, because the Petitioners were estopped by their conduct and course of action in the Indiana bankruptcy proceedings from questioning the jurisdiction of the Indiana Court.

A. Duggan, Trustee of Christopher, had appeared in the Indiana Court by attorneys of record, and J. M. Brown, signer of National's petition for reorganization in the Missouri Court, had appeared in the Indiana Court personally and by attorney, without either party questioning the jurisdiction of the Indiana Court, and with both parties apparently acquiescing fully in its actions until the very eve of sale.

B. The Indiana Trustee, in reliance on the representations and acquiescence of Duggan, Trustee of Christopher, and of J. M. Brown, spent several thousand dollars in preserving the assets and property of National Aircraft Corporation and in preparing those assets for sale, and in advertising and effecting the sale.

## ARGUMENT

### I

The judgment of the Circuit Court of Appeals should be affirmed, because the Indiana Court had the right to determine, from the facts in its own record, that it had jurisdiction to confirm the sale of assets of National Aircraft Corporation, made on April 20, 1944.

It is axiomatic, under our federal judicial system, that a court has the right to judge of its own jurisdiction.

*Texas v. Florida*, 306 U. S. 398, 83 L. Ed. 817 (1939);

*Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371, 84 L. Ed. 329 (1940);

*Ripperger v. A. C. Allyn & Co., Inc.*, 113 F. (2d) 332 (C. C. A. 2d, 1940), *cert. denied*, 311 U. S. 695, 85 L. Ed. 450 (1940).

As stated in *Chicot County Drainage District v. Baxter State Bank* (also cited by Petitioners at pages 13 and 28-29 of their Brief), in 308 U. S. at 376, 84 L. Ed. at 333:

"The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act."

Similarly, as stated in *Ripperger v. A. C. Allyn & Co., Inc.* (also cited at pages 13 and 31 of Petitioners' Brief), in 113 F. (2d) at 333:

"A court has power to determine whether or not it has jurisdiction of the subject matter of a suit and of the parties thereto."

Under this principle, the United States District Court for the Southern District of Indiana, Indianapolis Division, had the right to find that it had jurisdiction to confirm the sale of assets of National Aircraft Corporation, Bankrupt.

- A. The Indiana Court acquired valid jurisdiction of National Aircraft Corporation on January 21, 1944, through involuntary bankruptcy proceedings, since the reorganization proceeding of Christopher Engineering Company in the Missouri Court, begun December 27, 1943, did not carry with it the reorganization of any subsidiary or alleged subsidiary not joined therein.**

The creditors' petition for involuntary bankruptcy, filed against National Aircraft Corporation on January 21, 1944, contained all the jurisdictional facts required by Section 2 *a* of the Bankruptcy Law (11 U. S. C. A. 11 *a*) to confer jurisdiction on the Indiana Court. The debtor was an Indiana corporation, with its principal place of business and all its assets located at Elwood, Indiana.

Record, p. 12.

The pending reorganization proceeding of Christopher Engineering Company in the Missouri Court (R. 92) did not interfere with the jurisdiction of the Indiana Court, since National Aircraft Corporation, even if regarded as a subsidiary of Christopher, had not joined in the Missouri proceedings.

*In re Adolf Gobel, Inc.*, 80 F. (2d) 849 (C. C. A. 2d, 1936);

*Commercial Cable Staffs' Ass'n v. Lehman*, 107 F. (2d) 917 (C. C. A. 2d, 1939).

As pointed out by Judge Learned Hand in the *Commercial Cable Staffs'* case, *supra*.

\*\*\*\*\* Although the shareholders of the parent and the subsidiary are the same, the creditors are divided into two groups, their rights being against different assets. An examination of the text of the section leaves no doubt that this is its scheme. It does indeed allow a subsidiary to join in the reorganization of its parent (sub. a), but only upon filing its own petition and getting a separate approval." Sec 107 F. (2d) at 920

- B. The order of the Missouri Court on April 19, 1944, did not terminate the jurisdiction of the Indiana Court, since the record of the Indiana Court contained direct evidence and findings of fact that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company, and therefore, the Indiana Court had the right to find that the Missouri Court had no jurisdiction to approve National's petition for reorganization, filed under Section 129 (11 U. S. C. A. 529) as a subsidiary of Christopher.**

Even if National was a subsidiary of Christopher, which Respondent does not admit or concede, the Missouri Court had no jurisdiction to approve National's petition for reorganization under a proper interpretation of Section 129 of the Chandler Act, as will be discussed in Point II of this Argument. But if National was *not* a subsidiary of Christopher, then clearly and *a fortiori* the Missouri Court had no jurisdiction to approve National's petition. The subsidiary-parent relationship was the essential jurisdictional fact that must be established. If the Indiana Court found from its own record that National was not a subsidiary of Christopher, then the Indiana Court had unquestionable jurisdiction to confirm the sale of assets pursuant to its order.

A strong and exact analogy to this situation is found in the cases involving jurisdiction to impose a succession tax



on a decedent's estate, where domicile of the decedent is the basic fact on which jurisdiction rests.

*Tilt v. Kelsey*, 207 U. S. 43, 52 L. Ed. 95 (1907);

*Texas v. Florida*, 306 U. S. 398, 83 L. Ed. 817 (1939);

*In re Dorrance*, 115 N. J. Eq. 268, 170 Atl. 601 (1934), supplemented on other points in 116 N. J. Eq. 294, 172 Atl. 503 (1934), cert. denied, 13 N. J. Mis. R. 168, 176 Atl. 902 (1935), aff'd., 116 N. J. L. 362, 184 Atl. 743 (1936), cert. denied, 298 U. S. 678, 80 L. Ed. 1399 (1936).

In *Tilt v. Kelsey*, *supra*, New York's attempt to impose a succession tax on a decedent's estate was opposed on the ground that New Jersey had already determined that the decedent was domiciled in that State, by admitting his will to probate, and that succession taxes had already been paid under the law of New Jersey. It was held that New Jersey's decision was not binding on New York, and that New York had the right to determine independently the domicile of the deceased as a basis for its own jurisdiction. The Court said, in 207 U. S. at 52-53, 52 L. Ed. at 99-100:

"That re-examination, however, must be confined to the single question whether, by the assessment of the tax, [by New York] full faith and credit has been denied to the judicial proceedings of the state of New Jersey, in violation of article 4, section 1, of the Constitution. In the consideration of this question, the first inquiry which presents itself is whether the adjudication of the New Jersey court, that Tilt was, at the time of his death, a resident of New Jersey, was conclusive upon the state of New York, a stranger to the proceedings. If it was, that is the end of the case; because then New York could not take the first step necessary to bring the estate within the provision of the tax law of that state. But, upon principle and authority, that adjudication, though essential to the assumption

of jurisdiction to grant letters testamentary, was neither conclusive on the question of domicil, nor even evidence of it in a collateral proceeding. . . . It follows that the full faith and credit due to the proceedings of the New Jersey court do not require that the courts of New York shall be bound by its adjudication on the question of domicil. On the contrary, it is open to the courts of any state, in the trial of a collateral issue, to determine, upon the evidence produced, the true domicil of the deceased."

An even closer analogy is found in the *Dorrance* case, *supra*. New Jersey was seeking to impose inheritance tax against the *Dorrance* Estate. Pennsylvania had already made a determination that the decedent was domiciled in Pennsylvania, and this decision had been upheld on appeal. 309 Pa. 151, 163 Atl. 303 (1932), *cert. denied*, 287 U. S. 660, 77 L. Ed. 570 (1932). By the law of Pennsylvania, a determination of that kind is deemed final and conclusive against all the world. Nevertheless, it was held that the New Jersey court had the right to determine, as a basis of its own jurisdiction, that the decedent was domiciled in New Jersey. The logic and reasoning of the New Jersey Court justify setting forth a substantial portion of its opinion:

"As has already been said, the appellants contend that this court is precluded from considering that issue [domicil]; that the decision of the Pennsylvania court is conclusive and controlling upon this court. With that contention this court is unable to concur.

The contention, more fully expressed, is that (1) Pennsylvania decision or decree was a final decree in a proceeding in rem; that (2) the res in that proceeding was the assessment and levy of transfer tax in respect of the intangible personal property of the decedent; (3) that the right of Pennsylvania to assess and levy such tax in a decedent's estate was, and must necessarily be, predicated upon the fact that the decedent was domiciled in Pennsylvania; (4) that under the law

of Pennsylvania the determination of the Pennsylvania court in a proceeding of this kind is final and conclusive against all the world; (5) that, by virtue of article 4, section 1, of the Constitution of the United States, and of the statute enacted to carry that provision into effect (the Act of Congress of May 26, 1790, c. 11; U. S. Rev. Stat. Sec. 905 (28 USCA Sec. 687)), that adjudication by the Pennsylvania court must be accorded the same effect by the New Jersey courts, and hence must, in this appeal, be regarded as final and conclusive against the state of New Jersey (notwithstanding New Jersey was not a party to the Pennsylvania proceedings) and as a conclusive adjudication against the claim by New Jersey of the right to levy transfer inheritance tax in respect to the intangible personalty of the Dorrance estate.

The correctness of the first three propositions is not questioned; the correctness of the fourth may be assumed (but not decided); it is the fifth proposition which is incorrect, and which vitiates the conclusion of the argument.

The constitutional provision invoked by the appellants is commonly known as the full faith and credit clause. It is true that, under it, and the statute, the courts of this state are bound to give to the judicial proceedings in Pennsylvania the same faith and credit as they have by law and usage in the courts of Pennsylvania. But this is true only if the proceedings in the Pennsylvania court were within the jurisdiction of that court. It is always open to the courts of the sister state to inquire into the jurisdiction of the court which pronounced the judgment in question. When it is demanded of the courts of one state that full faith and credit be accorded to the judgment of a sister state, 'an inquiry into the jurisdiction (of the latter court) is always permitted, and if it be shown that the proceedings relied upon were without the jurisdiction of the court, they need not be respected.' *Tilt v. Kelsey*, 207 U. S. 43, at page 59, 28 S. Ct. 1, 7, 52 L. Ed. 95:

*Thompson v. Whitman*, 18 Wall. 457, 21 L. Ed. 897; *Thormann v. Frame*, 176 U. S. 350, 20 S. Ct. 446, 44 L. Ed. 500; *Burbank v. Ernst*, 232 U. S. 162, 34 S. Ct. 299, 58 L. Ed. 551.

Concededly the courts of Pennsylvania had no jurisdiction to assess and levy the tax in question unless the decedent was domiciled in Pennsylvania. It is therefore open to this court, in the exercise of its right to inquire into the jurisdiction of the Pennsylvania court, to inquire into, ascertain, and determine whether or not the decedent was domiciled in Pennsylvania. If it be determined that he was not domiciled in Pennsylvania, then the determination of the Pennsylvania court that the transfer inheritance tax assessable in respect of his intangible personalty is due to the state of Pennsylvania is in nowise binding upon this court and can in no wise interfere with the right of this court to inquire and determine if the decedent was domiciled in this state, and to affirm and establish (if it finds that decedent was domiciled in this state) the right of this state to levy the tax in question and the validity of the tax so levied and now under appeal." See 170 Atl. at 602-03.

Applying the analogy in the case at bar, the United States District Court for the Southern District of Indiana, Indianapolis Division, a court of jurisdiction equal to, and co-ordinate with, that of the United States District Court for the Eastern District of Missouri, Eastern Division, had the right to determine the issue of subsidiary-parent relationship. If it found that National was not a subsidiary of Christopher, then the Missouri Court had no jurisdiction to approve National's petition and restrain the Indiana Trustee. In making that finding, the Indiana Court would not be bound by the Missouri finding of subsidiary-parent relationship, any more than the New Jersey court was bound by Pennsylvania's decree on the jurisdictional fact of domicile.

Thus the case of *Kalb v. Feuerstein*, 308 U. S. 433, 84

L. Ed. 370 (1940), cited at page 13 and discussed at pages 29-30 of Petitioners' Brief, is clearly distinguishable. In that case there was no question as to whether or not the debtor was a farmer. There was no question as to whether the bankruptcy court in Wisconsin had jurisdiction to act on debtor's petition under Section 75 of the Bankruptcy Act (11 U. S. C. A. 203). In the present case, the question as to whether National was a subsidiary of Christopher had to be answered in the affirmative by the courts below before the bankruptcy court in Missouri could have any claim at all to jurisdiction. Even then there would be the further question whether jurisdiction would be in the Missouri Court under Section 129 or only in the Indiana Court under Section 127 of the Chandler Act. These elements were not present in the *Kalb* case.

Ample evidence in the Record supports the Indiana Court's finding that National was not a subsidiary of Christopher. J. M. Brown testified under oath at the first meeting of creditors in National's bankruptcy proceedings on March 7, 1944, that he and A. B. Christopher, as individuals, were the owners of the capital stock of National, and that it was not the property of Christopher Engineering Company (R. 6). See also Exhibits 6, 7, and 8, in Appendix B of this Brief. The last balance sheet of Christopher Engineering Company, accompanying its petition for reorganization, makes no mention whatever of any stock ownership interest in National. See Exhibit "A" to Exhibit 1 in Appendix B of this Brief. As late as April 1, 1944, Brown and Christopher apparently both regarded themselves as individual owners of National's stock. See Exhibit "B" to Exhibit 10 in Appendix B of this Brief.

The Referee made an express finding of fact in his certificate on review that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company. See

Record, page 12. The Referee made an express finding in his order of May 3, 1944, confirming the sale, that title to the assets was in James C. Sansberry, Trustee. See Record, page 3. Notice of those proceedings had been sent to attorneys of record for Duggan, Trustee, and J. M. Brown. See Record, page 37.

The Referee's findings were adopted and affirmed by the Indiana Court in its order overruling the petitions for review. See Record, page 68.

The findings of a Referee, approved and affirmed by the District Judge, are binding, except in the event that they are clearly erroneous.

*Brown v. Freedman*, 125 F. (2d) 151 (C. C. A. 1st, 1942);

*In re Peoria Braumeister Co.*, 138 F. (2d) 520 (C. C. A. 7th, 1943);

See Order No. 47, General Orders in Bankruptcy, 11 U. S. C. A. following Sec. 53;

Rule 52a, Federal Rules of Civil Procedure, 28 U. S. C. A. following Sec. 723 c.

This right in the Indiana Court to find that its own jurisdiction was not terminated, and that the Missouri Court had no jurisdiction to approve National's petition, is supported by well-established principles. In the case of *Old Wayne Mutual Life Ass'n v. McDonough*, 264 U. S. 8, 51 L. Ed. 345 (1907), the Court said:

"The constitutional requirement that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no state can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are



wanting in the due process of law enjoined by the fundamental law. 'No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.' *Scott v. McNeal*, 154 U. S. 34, 46, 38 L. Ed. 896, 901, 14 Sup. Ct. Rep. 1108. No state can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment or decree in a court of one state is questioned in a court of another government, Federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it. \* \* \*

"Chief Justice Marshall had long before observed in *Rose v. Himely*, 4 Cranch, 241, 269, 2 L. Ed. 608, 617, that, upon principle, the operation of every judgment must depend on the power of the court to render that judgment. In *Williamson v. Berry*, 8 How. 495, 540; 12 L. Ed. 1170, 1189, it was said to be well settled that the jurisdiction of any court exercising authority over a subject 'may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings.'" See 204 U. S. at 15-16, 51 L. Ed. at 348.

In the case of *Milliken v. Meyer*, 311 U. S. 457, 85 L. Ed. 278 (1940), the Court said:

"Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is, of course, open to inquiry. (Cases cited.) But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.'" 311 U. S. at 462, 85 L. Ed. at 282.

**C. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana order ap-**



**proving the sale, and therefore it was subject to attack when asserted in opposition to that order.**

Against the proposition that the Indiana Court could judge of its own jurisdiction and find that National was not a subsidiary of Christopher, the Petitioners have urged that under Section 149 of the Chandler Act (11 U. S. C. A. 549) the order of the Missouri Court was a conclusive determination of jurisdiction. It may be questioned whether the determination by the Missouri Court of subsidiary-parent relationship as a basis of jurisdiction, was entitled to any higher priority rating in the Indiana Court than the "conclusive" determination by Pennsylvania of domicile as a basis of jurisdiction, was accorded in the New Jersey Court, in the case of *In re Dorrance*, 115 N. J. Eq. 268, 170 Atl. 601 (1934), *cert. denied*, 298 U. S. 678, 80 L. Ed. 1399 (1936), discussed on pages 19-21 of this Brief, *supra*. It is not necessary, however, to decide that point. Section 149, by its express terms, provides that, "An order, *which has become final*, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court." There is no showing as to when the order of the Missouri Court became final. But it is clear that the order entered on April 19, 1944 (R. 61-66) was definitely not final on May 3, 1944, the date the Referee entered the order confirming the sale of assets which is under review.

In the report of the Senate Committee on the Judiciary, on Revision of the National Bankruptcy Act, it is stated that,

"Section 149 is designed to foreclose all direct or collateral attack upon jurisdiction or venue, once the period for appeal from an order approving a petition has expired." Sen. Rep. No. 1916, 75th Cong., 3rd Sess. (1938) 27.

Obviously, if collateral attack on jurisdiction is foreclosed

once the period for appeal has expired, it is *permitted* prior to that time. Thus the order of the Missouri Court approving the petition was not final on May 3, 1944, and was subject to collateral attack when asserted as a bar to the jurisdiction of the Indiana Court.

Section 149 must also be construed in the light of Sections 161, 137, and 144 of the Chandler Act. Section 161 (11 U. S. C. A. 561) provides:

"The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate."

Section 137 (11 U. S. C. A. 537) provides:

"Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by ~~or against~~ a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor."

Section 144 (11 U. S. C. A. 544) provides:

"If an answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied."

See also Section 116 (4) (11 U. S. C. A. 516 (4)), which shows by its reference to "final decree," that the first order of approval of a petition is not final.

There is no showing that notice of hearing, to be held not less than 30 nor more than 60 days after approval of the petition, as required by Section 161, was ever given by the Missouri Court.

Text-writers on bankruptcy have discussed the question of when an order becomes final. In the discussion of Section 149 in 10 Remington, Bankruptcy (1939), Section 4404, the author says:

"The use of the word 'final' indicates that the first order of approval (under either section 141, or sections 142 and 143, 11 U. S. C. A. sections 541-543) is to be considered 'interlocutory' in its nature until the expiration of the time prescribed by section 137 (11 U. S. C. A. sec. 537) for the filing of an answer (one or many) under section 144."

In Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act* (1938) 52 Harv. L. Rev. 1, the author says, at 7-8:

"In attempting to relieve practitioners of the dread that at some future date the entire proceedings will be put to naught by the discovery of a jurisdictional defect, the new statute provides that 'An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court.' The meaning which is to be attributed to the term 'final', however, is somewhat in doubt: it may mean the date when the time to appeal from the order has expired or when an appeal, if taken, has been determined and has resulted in an affirmance of the order; or it may refer to the possibility of further answers being filed. If the order of approval is to be given conclusive effect as to jurisdiction prior to

the expiration of the time to file answers, one of the chief reasons for permitting such answers and for liberalizing the provisions as to their filing will have been destroyed. A fair interpretation of 'final' would seem to require that effect be given to both these meanings, with an order of approval not regarded as 'final' until both the time to file answers and appeals has expired, and until the order is affirmed in the event that an appeal has been taken."

Similarly, the restraining order issued by the Missouri Court (R. 65-66) did not have finality. A temporary restraining order is not a final determination which renders the issue involved *res judicata*.

*Bohler v. Calloway*, 267 U. S. 479, 69 L. Ed. 745 (1925);

*Santowsky v. McKey*, 249 Fed. 51 (C. C. A. 7th, 1918).

A judgment is always subject to collateral attack when it is sought to be enforced, or asserted, if the court rendering it did not have jurisdiction.

*Williams v. North Carolina*, 89 L. Ed. 1123 (Adv. Sheets, 1945);

*Nardi v. Poinsatte*, 46 F. (2d) 347 (N. D. Ind. 1931);

*Petition of Taffel*, 49 F. Supp. 109 (S. D. N. Y. 1941).

In the important bankruptcy case of *John Vallyely v. Northern Fire & Marine Insurance Company*, 254 U. S. 348, 65 L. Ed. 297 (1920), Mr. Justice McKenna says, in 254 U. S. at 353-4, 65 L. Ed. at 300:

"Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

**D. Petitioners' claim that the judgment of the Missouri Court was res judicata has no basis in fact, because Respondent was never before the Missouri Court.**

The principles of res judicata require that before a judgment or decree of one court can be set up as a conclusive bar to proceedings in another court, it must have been a judgment (1) by a court of competent jurisdiction upon the same subject matter, (2) between the same parties, and (3) for the same purpose.

*Aspden v. Nixon*, 4 How. 467, 11 L. Ed. 1059 (1846).

For res judicata to apply, there must be identity of parties in the two actions.

*Troxell, Adm'x v. Delaware, L. & W. Ry.*, 227 U. S. 434, 57 L. Ed. 586 (1913).

The Respondent in the case at bar was never before the Missouri Court. Nor was he ever given any notice of a hearing, as required by Section 161 of the Chandler Act (11 U. S. C. A. 561), or opportunity to file answer under Section 137 (11 U. S. C. A. 537).

The cases cited by Petitioners on the point that principles of res judicata apply to jurisdictional questions, were cases in which jurisdiction was litigated as a contested issue, or in which full opportunity to present objections was granted. In the case of *American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. Ed. 231 (1932), cited on page 13 of Petitioners' Brief, the Surety Company had entered a general appearance, made a motion to vacate, and appealed from the order on that motion, all in the State Court proceedings that were later brought into question in an independent proceeding in Federal Court. As Mr. Justice Brandeis pointed out,

"There was an actual adjudication in the State Court of the question of the jurisdiction of the trial court to enter judgment. The scope of the issues

presented involved an adjudication of that issue." See 287 U. S. at 165, 77 L. Ed. at 237.

In the case of *Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371, 84 L. Ed. 329 (1940), cited at pages 13 and 28-29 of Petitioners' Brief, the Court specifically pointed out that the bondholders had full notice of the reorganization proceedings and ample opportunity to be heard in opposition to the decree that was held to bar their rights in a later suit. The Court said:

"The answer in the present suit alleged that the plaintiffs (respondents here) had notice of this proceeding and were parties, and the evidence was to the same effect, showing compliance with the statute in that respect. As parties, these bondholders had full opportunity to present any objections to the proceeding, not only as to its regularity, or the fairness of the proposed plan of readjustment, or the propriety of the terms of the decree, but also as to the validity of the statute under which the proceeding was brought and the plan put into effect. Apparently no question of validity was raised and the cause proceeded to decree on the assumption by all parties and the court itself that the statute was valid." See 308 U. S. at 375, 84 L. Ed. at 333.

The proceedings in the Missouri Court in the case at bar were completely ex parte, without notice, and without final decree.

Discussing the *Chicot* case in *United States v. United States Fidelity & Guaranty Co.*, 309 U. S. 506, 84 L. Ed. 894 (1940), the court said:

"In the *Chicot County Drainage Dist. Case* no inflexible rule as to collateral objection in general to judgments was declared. We explicitly limited our examination to the effect of a subsequent invalidation of the applicable jurisdictional statute upon an existing judgment in bankruptcy. To this extent the case

definitely extended the area of adjudications that may not be the subject of collateral attack. No examination was made of the susceptibility of such objection to numerous groups of judgments concerning status, extra-territorial action of courts, or strictly jurisdictional and quasi-jurisdictional facts." See 309 U. S. at 514, 84 L. Ed. at 899.

In the case of *Stoll v. Gottlieb*, 305 U. S. 165, 83 L. Ed. 104 (1938), the court said that res judicata applies when the question of jurisdiction has been decided "as a contested issue" and "after a party has his day in court, with opportunity to present his evidence and his view of the law." See 305 U. S. at 172, 83 L. Ed. at 109.

There was no contested issue in the Missouri Court. The Respondent did not have his day in court in those proceedings.

As stated in *Williams v. North Carolina*, 89 L. Ed. 1123 (Adv. Sheets, 1945), at 1126:

"A judgment in one State is conclusive upon the merits in every other State, but only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment.

'It is too late now to deny the right collaterally to impeach a decree of divorce made in another State, by proof that the court had no jurisdiction, even when the record purports to show jurisdiction.' It was 'too late' more than forty years ago. *German Sav. & L. Soc. v. Dormitzer*, 192 U. S. 125, 128, 48 L. Ed. 373, 376, 24 S. Ct. 221 \* \* \*.

It is one thing to reopen an issue that has been settled after appropriate opportunity to present their contentions has been afforded to all who had an interest in its adjudication. This applies also to jurisdictional questions. After a contest these cannot be



relitigated as between the parties. (Cases cited.) But those not parties to a litigation ought not to be foreclosed by the interested actions of others."

As pointed out in *Adam v. Saenger*, 303 U. S. 59, 82 L. Ed. 649 (1938);

"In a suit upon the judgment of another state, the jurisdiction of the court which rendered it is open to judicial inquiry, and when the matter of fact or law on which jurisdiction depends was not litigated in the original suit it is a matter to be adjudicated in the suit founded upon the judgment." See 303 U. S. at 62, 82 L. Ed. at 652.

In no event could the order of the Missouri Court be res judicata, since it was not a final decree, and the rules of res judicata are not applicable where the judgment is not a final one.

*G. & C. Merriam Co. v. Saalfeld*, 241 U. S. 22, 60 L. Ed. 868 (1916);

*Joseph T. Ryerson & Son, Inc. v. Bullard Machine Tool Co.*, 79 F. (2d) 192 (C. C. A. 2d, 1935);

See Restatement, Judgments (1942) Secs. 41, 42.

## II

Even if it should be determined that National was a subsidiary of Christopher, the judgment of the Courts below should be affirmed, because the Missouri Court had no jurisdiction to approve National's petition for reorganization.

The jurisdiction of bankruptcy courts to receive petitions is defined strictly in terms of venue. Section 112 of the Chandler Act (11 U. S. C. A. 512) provides that "the jurisdiction \* \* \* of the court," in a Chapter X reorganization, "where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication." In a bankruptcy proceeding before

adjudication, the jurisdiction of the courts, as defined by Section 2 *a* (11 U. S. C. A. 11 *a*), is merely such as to enable them to "adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdiction for the preceding six months, etc." This geographical limitation on jurisdiction of course bars the right of the Missouri Court to receive National's petition for reorganization, unless any other "provisions of this chapter" enlarge the jurisdiction granted by Sections 112 and 2 *a*. Petitioners contend that Section 129 (11 U. S. C. A. 529) did so enlarge it. Yet Respondent submits that National, if it chose to seek reorganization, did not have the right to file a petition under Section 129, but was permitted to file only in the Indiana Court under Section 127 (11 U. S. C. A. 527). Petitioners were seeking a forcible change of venue, completely unauthorized by statute.

**A. A subsidiary corporation can file petition for reorganization in the court which has approved the reorganization petition of its parent corporation only if it is an "original petition."**

Section 129 by its express language, permits the filing only of an "original petition." The use of the term "original petition" is clear evidence of Congressional intent. "Original petition" has both historical and legal meaning. Under the provisions of Section 77 B of the old Bankruptcy Act (11 U. S. C. A. 207), predecessor to Chapter X of the Chandler Act, a corporation seeking reorganization was authorized to file "an original petition, or, before adjudication in an involuntary proceeding, an answer, or in any proceeding pending in bankruptcy, \* \* \* a petition stating the requisite jurisdictional facts."

Not only is the term "original petition" used in Sections 128 and 129 of the Chandler Act (11 U. S. C. A. 528,

529), but it is also used in Section 102 (11 U. S. C. A. 502, set forth in Appendix A of this Brief, at page 51). In each instance, these words of art are employed by way of contrast to a situation in which there is a prior bankruptcy proceeding pending.

Particularly enlightening is the language of Judge Learned Hand in the case of *In re Paramount Public Corporation*, 85 F. (2d) 42 (C. C. A. 2d, 1936). He says:

"Subdivision (a) of section 77B (11 U. S. C. A. sec. 207 (2) provides for three situations: 'An original petition'; 'an answer' in bankruptcy before adjudication; 'a petition' before or after adjudication 'in any proceeding pending in bankruptcy.' Why the debtor should have the alternative of answer or petition before adjudication, or whether there is any but a nominal difference, we need not inquire. *What is important is that 'an original petition' is contrasted with a petition or answer in a 'proceeding pending in bankruptcy.'* When either of these is so interposed, reorganization becomes an amplification or new end product of the original bankruptcy, just as though the bankrupt or the alleged bankrupt had proposed a composition, of which indeed reorganization is a variant and an outgrowth, and on the basis of which its constitutionality was upheld." (Our italics.) See 85 F. (2d) at 44.

- B. Under the proper construction of Section 129, given in the Court below, an "original petition" can be filed only when there is no pending bankruptcy proceeding by or against the corporation.**

The term "original petition," as used in Chapter X of the Chandler Act has been construed in the case of *Clark Bros. Co. v. Porter Oil Co.*, 113 F. (2d) 45 (C. C. A. 9th, 1940). The Court said, in 113 F. (2d) at 47:

"Original jurisdiction of proceedings under chapter 10 (sections 101-276) of the Bankruptcy Act is

vested in courts of bankruptcy, including, of course, the district courts of the United States. The Oregon court, being a district court of the United States, is a court of bankruptcy.

A proceeding under Chapter 10 may be commenced (1) by filing a petition in a pending bankruptcy proceeding; (2) by filing an original petition. In this case, there was no pending bankruptcy proceeding. Hence, the debtor could and did file an original petition."

On this same point, in Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act* (1938), 52 Harv. L. Rev. 1, the author says, at page 5:

"If a bankruptcy proceeding is pending, the reorganization petition must be filed in that proceeding; otherwise, an original petition is filed."

Judge Sparks in his opinion on this case in the Circuit Court of Appeals, has interpreted Sections 126, 127, 128 and 129 (11 U. S. C. A. 526-529) as parts of a unified whole. His logic is unassailable. He said, in 149 F. (2d) at 551-52, (R. 98-99):

"Sub-Chapter IV of Chapter X deals with the petition for reorganization, including the right to file and the venue: 11 U. S. C. A. sections 526-529. They should be construed together.

Section 526 merely provides that a corporate debtor or its creditors may file a petition for reorganization of such debtor, providing there is no pending petition for reorganization of the same debtor.

Section 527 provides that if there is a bankruptcy proceeding pending against the debtor corporation, and we take this to mean an insolvent debtor against or by whom no petition for reorganization has yet been filed, then and in that event such a petition may be filed in that proceeding, either before or after adjudication.

Section 528 provides that *if no bankruptcy proceeding is pending* against the debtor corporation, and we construe this is to refer to *any* bankruptcy proceeding, then and in that event an *original* petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months.

If a corporation be a subsidiary, as provided in section 529, an *original* petition for reorganization may be filed by or against the debtor corporation as provided in section 528, or in the court which has approved the parent company's petition for reorganization.

It will be noted that section 528 deals only with estates where no bankruptcy proceeding of any kind is pending. In that event an *original* petition is permitted to be filed by the debtor or by its creditors. We interpret this to mean that the petition should be an original one, in the sense that no other petition in bankruptcy is pending in any jurisdiction with respect to the debtor's estate. No other interpretation has been suggested. Section 529 contains the same word presumably with the same intended meaning, otherwise the sentence would express an absurdity, because section 528 deals only with estates where no bankruptcy proceeding is pending with respect to such estate. Appellants contend that National was authorized and chose to file its alleged petition under section 529 rather than section 528. However, it is clear there was no authority to choose nor was a choice of jurisdiction made, for National could not then have filed under section 528, because there was then pending in Indiana an involuntary proceeding in bankruptcy against it; and for the further reason that its alleged petition for reorganization in Missouri was not an *original* one as required by both sections 528 and 529.

The cited sections of the statute seem to fully cover every conceivable contingency pertaining to the venue

of a petition for reorganization of a corporation; and we think our interpretation of them gives full force to each phrase and clause thereof. It is apparent that appellants' interpretation does not do this. True, section 529 does not contain the words found in section 528—"If no bankruptcy proceeding is pending." However, we think the substance of this limitation is contained in section 529, by the requirement that the petition shall be an original one. Such construction gives full effect to every word of the Act, and expresses what we consider the clear intention of Congress."

This becomes even more conclusive—although further reinforcement seems unnecessary—if the provisions of Sections 126 to 129 are read as one unbroken paragraph, omitting headings and section numbers.<sup>1</sup> It then follows, without the slightest doubt, that a subsidiary can file its original petition under Section 129 only if no bankruptcy proceeding is pending.

It is, of course, clear that National could have filed its petition for reorganization in the Indiana Court, under Section 127, even after adjudication. Then it could have applied for a transfer of the proceedings to the Missouri Court, under the provisions of Section 118 (11 U. S. C. A. 518), if the interests of the parties would best be served by

<sup>1</sup> "A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to \$5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter. A petition may be filed in a pending bankruptcy proceeding, either before or after the adjudication of a corporation. If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this Act or in the court which has approved the petition by or against its parent corporation."

such transfer. This was the procedure envisaged by the Senate Committee on the Judiciary at the time of the revision of the Bankruptcy Act.

"Section 118, derived from section 77B. (a), prescribes the conditions upon which proceedings begun in one jurisdiction may be transferred to another. Thus, for example, where a proceeding by or against a debtor is pending in one jurisdiction, and a proceeding by or against its subsidiary, as defined in section 106, is pending in another, one or the other of such proceedings may be transferred so that both may proceed in the same court, if the interests of the parties would be best served by such transfer." Sen. Rep. No. 1916, 75th Cong., 3rd Sess. (1938) 24-25.

And transfers of proceedings by a subsidiary or a parent have been permitted by the courts.

*In re Botany Consolidated Mills, Inc.*, 10 F. Supp. 267 (D. Del. 1935);

*In re American Fuel & Power Co.*, 32 F. Supp. 107 (D. Del. 1940).

Both reason and authority support the view that a petition for reorganization should be filed in the same forum in which a bankruptcy proceeding is pending. One of the prerequisites to approval of a petition is that it must have been filed in good faith. Section 141 (11 U. S. C. A. 541). "A petition shall be deemed not to be filed in good faith if \* \* \* a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding." Section 146 (11 U. S. C. A. 546). The court in which those prior proceedings are pending may be the court best able to determine whether the interests of creditors and stockholders can be served better by reorganization or by liquidation.

*Cf. Marine Harbor Properties, Inc. v. Mfrs. Trust Co.*, 317 U. S. 78, 87 L. Ed. 64 (1942);



*Fidelity Assurance Ass'n v. Sims*, 318 U. S. 608, 87 L. Ed. 1032 (1943).

Consider also the opinion of the House Committee on the Judiciary as to the proper jurisdiction for corporate reorganization under Chapter X of the Chandler Act. In H. R. Rep. No. 1409, 75th Cong., 1st Sess. (1937), the Committee said, at page 40:

"In general, the bill sets up as the only valid criterion for jurisdiction the company's principal place of business, or the place of location of its principal assets. Selection of any other jurisdiction usually means conducting the reorganization at great distances from the place or places where the corporation does its business. It means putting investors to great expense and difficulty if they wish to appear and participate in the proceedings. *It means, also, that inside groups who may be in control of a reorganization, are able to search around for the jurisdiction in which they estimate it is least likely, for a number of reasons, that their conduct of the corporation will be examined; that they will be exposed to liability, and their perpetuation in office endangered. These defects have been met and corrected by the bill in limiting the venue of reorganization proceedings to the principal place of business or the location of the corporation's principal assets, for the greater part of the 6 months preceding the filing of the petition.*" (Our italics.)

The interpretation of Section 129 given by the court below, which Respondent submits is eminently correct and proper, does not deny meaning but gives fitting effect to Section 148 (11 U. S. C. A. 548). The construction given to Section 148 must be consistent with the plain language of Section 127. "An order approving a petition shall operate as a stay of a prior pending bankruptcy"—provided the petition is filed in the court in which the prior

bankruptcy proceeding is pending. Under Section 127, a petition for reorganization can be filed at any stage of a pending bankruptcy proceeding. In an ordinary bankruptcy proceeding, the judge at an early stage makes an order of reference to a referee under Section 22 (11 U. S. C. A. 45). Yet, the petition for reorganization, containing the requisite allegations set forth in Section 130 (11 U. S. C. A. 530), is addressed to the judge and requires his order under Section 141 (11 U. S. C. A. 541). That order may then operate as a stay of a prior pending bankruptcy, which is being administered before the referee in the same court. To give meaning to Section 148 it is not necessary to permit a subsidiary to file for reorganization in a court of its own choosing, when a prior bankruptcy proceeding is pending against it.

One further consideration arises from a study of Sections 236 and 238 of the Chandler Act (11 U. S. C. A. 636, 638), set forth in Appendix A of this Brief, at page 54. If a reorganization proceeding is dismissed for failure to propose, confirm, or consummate a plan, and the reorganization petition had been filed in a prior pending bankruptcy, then the order of dismissal shall direct that bankruptcy be proceeded with, and the prior pending proceeding shall be reinstated.

If Petitioners are correct that they had a right to file in the Missouri Court, despite the pending bankruptcy in the Indiana Court, then the assets of National would go from Indiana control to Missouri control, and if reorganization proceedings were dismissed in Missouri, the assets would come back to Indiana control. Obviously this shuttling back and forth would be contrary to Congressional intent. Note that in Sections 236 and 238 mention is made of only two methods of filing petition for reorganization—filing under Section 127 in a pending bank-

ruptcy, and filing under Section 128 when there is no pending bankruptcy. No mention is made of filing for a subsidiary by some method other than that of Section 127 if there is a prior pending bankruptcy. Section 129, with its emphasis on "original petition" is clearly just an offshoot of Section 128: the right to file under Section 129 arises only when there is no pending bankruptcy.

**C. Section 129 is far more than a mere venue statute, but is jurisdictional in its nature.**

The jurisdiction of bankruptcy courts to receive petitions for reorganization is defined in terms of venue, under Sections 112 and 2 *a* of the Chandler Act. (11 U. S. C. A. 512, 11 *a*). Section 129 enlarges the jurisdiction granted by Section 112 only if two jurisdictional facts are present: (1) the corporation must be a subsidiary, and (2) it must be filing an "original petition"—that is, there must be no prior pending bankruptcy. Unless both these facts obtain, the Missouri Court in the present case is not merely a court of improper venue—it is a court without jurisdiction either of the person or the subject-matter.

In the case of *In re Hamilton Gas Co.*, 79 F. (2d) 97 (C. C. A. 2d, 1935), it was held that a corporation could not file petition for reorganization in New York when its business had been operated by equity receivers in West Virginia for the preceding six months, and a creditors' petition for reorganization had been filed in West Virginia just prior to the filing of the New York proceeding. The court said, in 79 F. (2d) at 98:

"No jurisdictional basis for this petition for reorganization exists unless its principal place of business was in New York for the greater part of the six months preceding its filing."

Note that the discussion was not of venue, but of jurisdiction.

The case of *Fairbanks Steam Shovel Co. v. Walls*, 240 U. S. 642, 60 L. Ed. 841 (1916), cited by Petitioners at pages 15, 26, and 51 of their Brief, does ~~not~~ apply. The principal issue in that case was whether a chattel mortgage had been properly recorded, so as to be valid against a trustee in bankruptcy. It was held that the mortgage was invalid, since it had never been recorded in Cook County, Illinois, the "legal residence" of the bankrupt. Then it was objected that Cook County was in the Northern District of Illinois, while the bankruptcy proceedings and the controversy over the mortgage were in the United States District Court for the Southern District of Illinois. It was held that the parties had appeared in Court and by answering and making defense on the merits had consented to the jurisdiction, so that they could not later question it. In the instant case, there has been no consent by the Respondent to the jurisdiction of the Missouri Court. Further, in the *Fairbanks* case, it was insisted that the adjudication of bankruptcy was invalid, and that the trustee had no capacity to sue. It was held that the question of capacity was waived because not raised in the trial court. The adjudication, upon a creditors' petition, was held not open to collateral attack. An order of adjudication is a final order, far different from the preliminary ex parte order of the Missouri Court, which was bound to provide for notice of hearing under Section 161 (11 U. S. C. A. 561) and permit filing of answers under Section 137 (11 U. S. C. A. 537), and decide any issue raised by those answers under Section 144 (11 U. S. C. A. 544), before any final order could be issued. Jurisdiction over person and subject-matter, both questionable elements in the Missouri proceeding, can always be questioned, even in a collateral proceeding.

See *Old Wayne Mutual Life Association v. Mc*

*Donough*, 204 U. S. 8, 15-16, 51 L. Ed. 345, 348 (1907);

*Muliken v. Meyer*, 311 U. S. 457, 462, 85 L. Ed. 278, 282 (1940).

- D. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana order approving the sale, and therefore it was subject to attack when asserted in opposition to that order.

The provisions of Section 149 of the Chandler Act (11 U. S. C. A. 549) do not apply, because the order of the Missouri Court had not become final on May 3, 1944.

See Sections 161, 137, 144, 116 (4) of Chandler Act (11 U. S. C. A. 561, 537, 544, 516 (4));

10 Remington, Bankruptcy (1939) Sec. 4404;

Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act* (1938)

52 Harv. L. Rev. 1, 7-8.

The discussion and additional authorities under point I.e. at pages 24-28 of this Brief, also apply to this portion of the Argument.

### III.

The judgment of the Circuit Court of Appeals should be affirmed, because the title and possession of the Indiana Trustee, acting under the order of the Indiana Court, could not be terminated by a summary proceeding in the Missouri Court.

- A. The Missouri Court had no jurisdiction to adjudicate in a summary proceeding a controversy over property held adversely to the claim of the Missouri Trustee.

It is a well-established rule that a plenary suit is necessary, where property not in possession of the bankruptcy court is held under a substantial adverse claim. In the

leading case of *Taubel-Scott-Kitzmiller Company, Inc., v. Fox*, 264 U. S. 426, 68 L. Ed. 770 (1924), the Court said, through Mr. Justice Brandeis:

"In no case where it lacked possession could the bankruptcy court, under the law as originally enacted, nor can it now (without consent) adjudicate in a summary proceeding the validity of a substantial adverse claim." See 264 U. S. at 433-34, 68 L. Ed. at 774.

This rule of ordinary bankruptcy applies also to proceedings for corporate reorganization.

*Warder v. Brady*, 115 F. (2d) 89 (C. C. A. 4th, 1940);  
*In re Mt. Forest Fur Farms of America, Inc.*, 122 F. (2d) 232 (C. C. A. 6th, 1941), cert. denied sub nom. *Fitzgerald v. Gulf Refining Co.*, 314 U. S. 701, 86 L. Ed. 561 (1942).

In the *Warder* case, *supra*, in ruling that a trustee in reorganization under Chapter X must proceed by plenary suit against a special receiver in equity who had a substantial adverse claim to a fund in his possession, the court said:

"It seems clear that the bankruptcy court under Ch. X has jurisdiction to entertain all suits to which its trustee or the debtor in possession is a party, even though they be instituted against adverse claimants.

It does not follow, however, that the jurisdiction of the bankruptcy court over suits against an adverse claimant may be summarily exercised. The statute does not so provide, and under the well established procedural rule of the ordinary bankruptcy courts, as we have seen, suits by a trustee to recover property from an adverse claimant in possession must take the form of a plenary action. This is especially true when the title to property is in dispute." See 115 F. (2d) at 94.

Similarly, in the *Mt. Forest Fur Farms* case, a 77 B proceeding, the court said:

"Neither exclusive jurisdiction of the debtor nor power to issue process outside the district confers upon the bankruptcy court the power, in a summary proceeding, to decide, without the consent of an adverse claimant, a controversy concerning property in his possession, unless his claim be merely colorable. Were it otherwise, every bona fide possessor of property held adversely to a bankrupt could be haled into a distant Federal Court to defend his right to the property whenever the trustee in a reorganization proceeding should choose to corral him summarily." See 122 F. (2d) at 239.

**B. The Indiana Trustee had a very substantial adverse claim, and was entitled to a plenary suit.**

Under the rule of the *Taubel-Scott-Kitzmiller* case, and the subsequent cases involving corporate reorganization that have followed it, the Indiana Trustee not only had possession of the assets of National, but his claim to those assets under order of the Indiana Court was substantial, and adverse to the claim of the Missouri Trustee. The Indiana Trustee had title to those assets by order of a court whose record contained sworn testimony that the stock in National Aircraft Corporation was owned by J. M. Brown and A. B. Christopher as individuals, and that Christopher Engineering Company was not the owner of that stock in any way. That claim was substantial, not colorable, and was definitely adverse to the claim of a Trustee appointed pursuant to a petition signed on behalf of National by the same J. M. Brown and alleging that the majority of the capital stock of National was owned directly or indirectly by Christopher Engineering Company (R. 58). The adverse nature of the claim of the Indiana Trustee becomes forcibly clear when one recalls that only if Na



tional were a subsidiary of Christopher could the Missouri Court have any shred of claim to jurisdiction over the whole proceeding. An equally strong element of the substantial adverse claim of the Indiana Trustee is the fact that no "original petition" had been filed with the Missouri Court as required by Section 129 (11 U. S. C. A. 529), and therefore his title by virtue of the Indiana proceedings was unimpaired.

From these facts it follows that the issues could not be decided in a summary proceeding, as the Missouri Court attempted, but the Indiana Trustee was fully entitled to a plenary suit.

#### IV.

**The judgment of the Circuit Court of Appeals should be affirmed, because the Petitioners were estopped by their conduct and course of action in the Indiana bankruptcy proceedings from questioning the jurisdiction of the Indiana Court.**

The factual basis for the foregoing proposition is set forth in our chronological statement of facts on pages 3-9 of this Brief, so we shall not repeat in detail. This shows such a course of conduct on the part of the bankrupt and Missouri Trustee alike as to render their eleventh hour attempt at evasion inequitable and unconscionable.

- A. Duggan, Trustee of Christopher, had appeared in the Indiana Court by Attorneys of record, and J. M. Brown, signer of National's petition for reorganization in the Missouri Court, had appeared in the Indiana Court personally and by attorneys; after January 25, 1944, neither party questioned the jurisdiction of the Indiana Court and both parties acquiesced fully in its actions until the very eve of sale.**

The principle of equitable estoppel which we are as-

serting, as stated by Lord Campbell in an old English case, was quoted by this Court in the case of *Leather Mfrs. Nat. Bk. v. Morgan*, 117 U. S. 96, 29 L. Ed. 811 (1886):

“ ‘If a party has an interest to prevent an act being done, has full notice of its having been done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous license.’ ” See 117 U. S. at 113, 29 L. Ed. at 818.

Petitioners standing by, permitting administration to be had and an order of sale to be entered, with resultant expense, have created just such an estoppel.

The doctrine of estoppel is well stated in the case of *In re Walton Hotel Co.*, 116 Fed. (2d) 110 (C. C. A. 7th, 1940). It was said in that case, as might as truly be said in the instant case:

“No clearer case of estoppel could exist. The law does not permit one to stand by in silence while, with his knowledge, judicial proceedings are in progress affecting his rights and withhold objections to alleged erroneous proceedings until certain bona fide rights have intervened and then challenge their validity on account of such error. He who remains silent when he ought to speak cannot be heard to speak when he should be silent.” See 116 F. (2d) at 112.

- B. The Indiana Trustee, in reliance on the representations and acquiescence of Duggan, Trustee of Christopher, and of J. M. Brown, officer of the bankrupt, spent several thousand dollars in preserving the assets and property of National Aircraft Corporation and in preparing those assets for sale and in advertising and effecting the sale.**

Not only were these services performed, but a group of from 300 to 400 prospective purchasers were assembled. The unexpected stoppage of such sale would, if effective, have meant not only the expense of several thousand dollars to the estate, but detriment, damage and expense to all the bidders who had travelled many miles, responsive to an advertisement of the United States Court. The prestige of the Court would have suffered and attendance at future sales would have been materially affected if such eleventh hour surprise procedure could operate to interfere with the orders and conduct of a court of co-ordinate jurisdiction.

Another pertinent expression on the subject of estoppel is contained in the case of *Lebold v. Inland Steel Co.*, 125 F. (2d), 369 (C. C. A. 7th, 1941), *cert. denied*, 316 U. S. 675, 86 L. Ed. 1749 (1942).

The Court says, in 125 F. (2d) at 375:

"Estoppel arises only when one has so acted as to mislead another and the one thus misled has relied upon the action of the inducing party to his prejudice. Shortly stated, one may not assume a position inconsistent with a former position to the prejudice of his adversary. *Texas Co. v. Gulf Refining Co.*, 5 Cir., 26 Fed. (2d) 394; *Pomeroy Equity Jurisprudence*, Sec. 804. It is the injury accruing from inducement or silent acquiescence which creates the estoppel."

In *Clinton Trust Co. v. John H. Elliott Leather Co.*, 132 Fed. (2d) 299 (C. C. A. 2nd, 1942), it is stated:

"Parties in interest who have invoked or accepted the jurisdiction of the bankruptcy court to determine their claim to the debtor's assets may not thereafter attempt to challenge that jurisdiction." (Cases cited). See 132 F. (2d) at 304.

Petitioner Duggan, as Trustee of Christopher, came to

the Indiana Court seeking the assets of National, and attempting to prevent the appointment of a Receiver (R. 15). His attorney and National and its attorneys, came to the first meeting of creditors and proposed a plan for sale of the assets to a new corporation (R. 7). How can they now challenge that jurisdiction or say they did not accept it?

### CONCLUSION

It is respectfully submitted that the judgment of the Court below should be affirmed. The Indiana Court had the right to determine that its own jurisdiction, validly acquired, was not terminated by the proceedings in the Missouri Court, since its own record showed that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company. The finding, that National was not a subsidiary of Christopher, was a jurisdictional fact, giving the Indiana Court full authority to confirm the sale of assets by the Indiana Trustee.

Even granting that National was a subsidiary, something never conceded but earnestly contested and denied, the Missouri Court still had no jurisdiction to approve National's petition for reorganization, since it was not an "original petition" as required by Section 129 of the Bankruptcy Act. An interpretation that would permit a petition for reorganization to be filed in one Court while a bankruptcy proceeding against the same corporation was pending in another court, would deny to the term "original petition" the historical and legal meaning that Congress intended.

The Missouri Court had no jurisdiction in a summary proceeding to adjudicate the substantial adverse claim of the Indiana Trustee, holding possession under order of the Indiana Court. A plenary suit was required. Going

beyond every legal argument in this case is the strong equitable estoppel against the Petitioners herein, because of their conduct in the Indiana proceedings, acquiescing in every determination and every order until the very eve of sale. On any or all these grounds, the judgment of the Courts below should be affirmed.

Respectfully submitted,

CONRAD S. ARNKENS,  
JULIAN BAMBERGER,

*Of Counsel.*

RALPH BAMBERGER,  
ISIDORE FEIBLEMAN,  
CHARLES B. FEIBLEMAN,

*Attorneys for Respondent.*

## **APPENDIX A**

### **Additional Sections of Chandler Act Pertaining to Proceedings under Chapter X.**

---

In addition to the Sections of the Chandler Act quoted in the main body of Respondent's Brief, the following additional sections bearing on Chapter X proceedings are respectfully set forth:

. . .

"Sec. 102. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, That Section 23, subdivision h and n of section 57, section 64, and subdivision F of section 70, shall not apply in such proceedings unless an order shall be entered directing that **bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive.** For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act except where an adjudication had previously been entered. (11 U. S. C. A. 502.)

"Sec. 118. The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district, regardless of the location of the principal assets of the

debtor or its principal place of business, if the interests of the parties will be best served by such transfer. (11 U. S. C. A. 518.)

“Sec. 120. Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices to be given under this chapter. (11 U. S. C. A. 520.)

“Sec. 130. Every petition shall state—

“(1) that the corporation is insolvent or unable to pay its debts as they mature;

“(2) the applicable jurisdictional facts requisite under this chapter;

“(3) the nature of the business of the corporation;

“(4) the assets, liabilities, capital stock, and financial condition of the corporation;

“(5) the nature of all pending proceedings affecting the property of the corporation known to the petitioner or petitioners and the courts in which they are pending;

“(6) the status of any plan of reorganization, readjustment, or liquidation affecting the property of the corporation, pending either in connection with or without any judicial proceeding;

“(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter XI of this Act; and

“(8) the desire of the petitioner or petitioners that a plan be effected (11 U. S. C. A. 530).



"Sec. 137. Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee, or, if the debtor is not insolvent, by any stockholder of the debtor. (11 U. S. C. A. 537.)

"Sec. 146. Without limiting the generality of the meaning of the term 'good faith', a petition shall be deemed not to be filed in good faith if—

"(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

"(2) adequate relief would be obtainable by a debtor's petition under the provisions of Chapter XI of this Act; or

"(3) it is unreasonable to expect that a plan of reorganization can be effected; or

"(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding. (11 U. S. C. A. 546).

"Sec. 161. The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate. (11 U. S. C. A. 561).

"Sec. 228. Upon the consummation of the plan, the judge shall enter a final decree—

"(1) discharging the debtor from all its debts and lia-

bilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

“(2) discharging the trustee, if any;

“(3) making such provisions by way of injunction or otherwise as may be equitable; and

“(4) closing the estate.” (11 U. S. C. A. 628.)

“Sec. 236. If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

“(1) where the petition was filed under section 127 of this Act, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this Act; or

“(2) where the petition was filed under section 128 of this Act, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders. (11 U. S. C. A. 636.)

“Sec. 237. Upon the dismissal of a proceeding under this chapter, where the petition was filed under section 128 of this Act, the judge shall enter a final decree discharging the trustee, if any, and closing the estate, except as other-

wise provided by section 259 of this Act. (11 U. S. C. A. 637).

"Sec. 238. Upon the entry of an order directing that bankruptcy be proceeded with—

"(1) where the petition was filed under section 127 of this Act, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 128 of this Act, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved." (11 U. S. C. A. 638.)

## APPENDIX B

The proceedings included in this Appendix are set forth for the information of the Court, for the reason that they were also before the United States Circuit Court of Appeals for the Seventh Circuit under the following circumstances:

The Petitioners, Appellants below, in their Brief filed with the United States Circuit Court of Appeals for the Seventh Circuit, on November 21, 1944, included as Addenda the order Approving Petition and Appointing Trustee in the original Christopher Engineering Company reorganization proceedings, which is Exhibit 2 in this Appendix, and the Entry Approving Trustee's Bond, which is Exhibit 3 in this Appendix. Thereupon the Respondent, Appellee below, in order that the Court might have a more complete picture, included in his brief filed with the United States Circuit Court of Appeals for the Seventh Circuit the certified copies of pleadings and orders set forth as Exhibits 1, 4, 5, 6, 7, 8, and 9 herein.

Exhibit 10, which is a certified copy of the petition and proof of claim of J. M. Brown, filed in the National Aircraft Corporation bankruptcy proceedings in the Indiana Court on September 2, 1944, was not on file at the time the order was entered by the District Court on June 5, 1944 (R. 68). This Exhibit was, however, presented to the Circuit Court of Appeals at the time of the oral argument of this case on February 6, 1945 (R. 90). It shows that as late as April 1, 1944, A. B. Christopher and J. M. Brown both regarded themselves as individual owners of the stock of National Aircraft Corporation.

### **EXHIBIT No. 1**

In the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of

**CHRISTOPHER ENGINEERING CO.,**

A Corporation,

Debtor.

In proceedings  
for the reorgan-  
ization of a cor-  
poration.

No. 10947

### **DEBTOR'S PETITION FOR CORPORATE REORGANIZATION**

**TO THE HONORABLE JUDGES OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DIVISION OF THE EASTERN JUDICIAL DISTRICT  
OF MISSOURI:**

The petition of Christopher Engineering Company, a corporation, the above-named Debtor, respectfully states:

(1) The Debtor is a corporation duly organized and existing under the laws of the State of Missouri and has had its principal office and principal place of business

3615 Olive Street, St. Louis, Missouri, within the above Judicial District for a longer portion of the six months immediately preceding the filing of this petition than in any other Judicial District. The Debtor corporation was incorporated under the laws of the State of Missouri on June 11, 1942.

(2) The Debtor is a corporation as defined in the Bankruptcy Act which could be adjudged a bankrupt under the said Act and is not a municipal company or a banking corporation or a building and loan association, and is not a railroad corporation authorized to file a petition under Section 77 of the said Act.

(3) The Debtor is unable to pay its debts as they mature.

(4) The Debtor desires that a plan of reorganization be effected under the provisions of Chapter X of the Bankruptcy Act.

(5) The nature of the Debtor's business is tool designing.

(6) The nature of all pending proceedings affecting the property of the Debtor, so far as is known, and the Courts in which they are pending, are as follows: Joe Dubman, Plaintiff, vs. Christopher Engineering Company, a corporation, and A. B. Christopher, J. M. Brown and J. M. Brown, Trustee, and A. B. Christopher and J. M. Brown, doing business as Christopher Aircraft Co., and A. B. Christopher and J. M. Brown, doing business as Christopher Tooling Co., and A. B. Christopher and J. M. Brown, doing business as Christopher Engineering and Manufacturing Co., Defendants, Cause No. 68722 pending in the Circuit Court of the City of St. Louis, Division No. 3. This is a proceeding brought by the plaintiff for an accounting and for the appointment of a receiver and wherein the Court did, on the 17th day of December, 1943, appoint J. F. Duggan receiver of all the assets of the debtor corporation and

the Court did further, among other things, enter an order requiring the defendants to account to the plaintiff; that there is now pending in the St. Louis Court of Appeals as Cause No. 26596 a proceeding brought by the defendants in said action against the Honorable James E. McLaughlin, Judge of the Circuit Court of the City of St. Louis, Missouri, which proceedings are in the nature of a petition for a Writ of Prohibition to prevent the Circuit Court proceeding further in the above entitled action.

(7) The assets, liabilities, capital stock and financial condition of your petitioner are as follows:

(a) The assets of your petitioner consist of accounts receivable of the National Aircraft Corporation amounting to approximately \$55,000; claim against Christopher Engineering and Manufacturing Co. of approximately \$40,000, office equipment, drafting-room equipment, designs, etc., all of an aggregate fair value of approximately \$100,000.

(b) The liabilities of your petitioner, exclusive of its capital stock and unpaid dividends, consist of accounts payable in the amount of approximately \$89,000.

(c) The issued capital stock of your petitioner is \$5,000 in preferred stock of the par value of \$100 per share and \$5,000 in common stock of no par value.

(d) The financial condition of your petitioner is fully set forth in the balance sheet dated as of September 30, 1943, marked "Exhibit A," annexed hereto and made a part hereof.

(8) In order for your petitioner to obtain relief, it is necessary that the rights of unsecured creditors of the debtor be modified and that an extension of the time of payment of unsecured debts be given your petitioner, and your petitioner cannot obtain adequate relief under Chapter



XI<sup>o</sup> of the Bankruptcy Act. Your petitioner believes that its assets are of a value in excess of its total liabilities, but the nature of its assets is such that their true value is not readily realizable; a forced sale of said assets would bring substantially less than its total liabilities.

(9) It is the desire of your petitioner that a plan of reorganization be effected under the provisions of Chapter X of the Bankruptcy Act.

(10) No other petition by or against your petitioner is pending under Chapter X of said Act, nor any other bankruptcy proceeding initiated by a petition by or against your petitioner is now pending.

WHEREFORE, your petitioner prays:

(1) That an order be entered approving this petition.

(2) That a Trustee or Trustees be appointed who, in addition to the rights and powers vested in a Trustee appointed under Section 44 of the Bankruptcy Act, shall be vested with the rights and powers of a Receiver in Equity appointed by a Court of the United States for your petitioner's property, except such rights and powers as may be inconsistent with the provisions of Chapter X of said Act.

(3) That said Trustee be authorized, directed and empowered to operate the business and manage the property of your petitioner. 7

(4) That an order be entered directing the Receiver appointed by the Circuit Court of the City of St. Louis, Missouri, to turn over to your petitioner, or to the Trustee to be appointed herein by the Court, the business and assets of your petitioner and thereupon, that an order be entered giving directions for the conduct of your petitioner's business during the pendency of these proceedings.



(5) That the Receiver above mentioned, appointed by the Circuit Court of the City of St. Louis, Missouri, be enjoined and restrained from taking any steps of whatsoever kind or nature toward selling or in any other way affecting the assets of your petitioner.

That further proceedings may be had upon this petition in accordance with the provisions of Chapter X of said Act and that your petitioner have such other and further relief as is just.

CHRISTOPHER ENGINEERING COMPANY,  
A Corporation

by

(S) A. B. CHRISTOPHER  
President  
Petitioner

NOAH WEINSTEIN  
GEO. O. DURHAM  
B. SHERMAN LANDAU  
Attorneys for Petitioner

STATE OF MISSOURI }  
CITY OF ST. LOUIS } SS:

A. B. Christopher makes solemn oath that he is President of the Christopher Engineering Company, a corporation, the petitioner named in the foregoing petition, and is duly authorized to make said petition and this affidavit in its behalf, and that the statements contained in said petition are true according to the best of his knowledge, information, and belief.

(S) A. B. CHRISTOPHER

Subscribed and sworn to before me this 24th day of  
December, 1943.

(S) NOAH WEINSTEIN  
Notary Public

(SEAL)

My commission expires: March 13th, 1944.

Endorsed:

"Filed Dec. 27, 1943

Jas. J. O'Connor  
Clerk."

## CHRISTOPHER ENGINEERING COMPANY

Balance Sheet—Sept. 30, 1943

### ASSETS

#### Current Assets

Cash on Hand.....	\$ 300.00
Deposits .....	240.00
Accounts Receivable:	
National Aircraft Corp. ....	54,979.43
Offset unliquidated acct. Chris-	
topher Eng. & Mfg. Co., Est...	40,000.00

Total Current Assets.....	\$95,519.43
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#### Fixed Assets

Office Equipment .....	764.49
Draughting Room Equipment...	1,617.20
Designs .....	5,000.00
Electrical Installation .....	95.00
Incorporating Expense .....	87.10

Total Fixed Assets.....	7,563.79
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Total Assets .....	\$103,083.22
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## LIABILITIES AND CAPITAL

### Liabilities

Overdraft in checking account  
with bank .....\$ 267.18

### Accounts payable:

A. B. Christopher..\$6,500.00  
J. M. Brown ..... 6,500.00  
Christopher Eng. &  
Mfg. Co. ....75,681.11    88,681.11

Accrued Taxes ..... 339.80

Total Liabilities ..... 89,288.09

### Capital

Preferred Stock ..... 5,000.00  
Non Par Value Common Stock... 5,000.00    10,000.00

Operating Profit ..... 3,795.13

\$103,083.22

## "EXHIBIT A"

### JOINT RESOLUTION AUTHORIZING DEBTOR'S PETITION

WHEREAS dissension has arisen between the under-  
signed constituting a majority of the Board of Directors  
and owning a majority of the shares of stock of the Chris-  
topher Engineering Company and Joe Dubman, being the  
minority of said Board of Directors, and,

WHEREAS, the said Joe Dubman, in hostility to the  
majority of the Board of Directors and to the corporation  
has heretofore instituted his suit in the Circuit Court of  
the City of St. Louis against the corporation, and the ma-  
jority of the Board of Directors, the purpose of which

suit is for the appointment of a receiver and the seizure of all the assets of the corporation, and,

WHEREAS, by reason thereof no formal meeting of the Board of Directors or stockholders can be held, and,

WHEREAS, in the judgment of the undersigned majority of said Board of Directors and stockholders, the pendency of said suit and the financial condition of the said corporation is such as to be disastrous to the corporation, its creditors and stockholders,

**NOW THEREFORE BE IT RESOLVED:**

That in the judgment of the undersigned it is desirable and for the best interests of this corporation, its creditors, stockholders and other interested parties, that a petition for reorganization of this corporation be filed under the provisions of Chapter X of the Act of Congress relating to bankruptcy; and it is further

RESOLVED that the form of petition under said Chapter X, presented to this meeting be, and the same hereby is, approved and adopted in all respects, and that the President or Vice-President of this corporation be, and he hereby is, authorized and directed, on behalf of and in the name of this corporation, to execute and verify a petition substantially in such form and to cause the same to be filed with the District Court of the United States for the Eastern District of the Eastern Judicial District of Missouri; and it is further

RESOLVED that the officers of this corporation be, and they hereby are, authorized to execute and file all petitions, schedules, lists and other papers and to take any and all action which they may deem necessary or proper in connection with such proceedings

under said Chapter X, and in that connection to retain and employ all assistance by legal counsel or otherwise which they may deem necessary or proper with a view to the successful termination of such proceedings.

SIGNED and delivered this 23rd day of December, 1943.

(S) A. B. CHRISTOPHER

President.

(S) J. M. BROWN

Vice-President.

United States of America  
Eastern District of Missouri } ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original DEBTOR'S PETITION FOR CORPORATE REORGANIZATION filed December 27, 1943, in the Matter of CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, in Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D., 1944.

JAMES J. O'CONNOR, Clerk.

By JOHN A. OLDENDORPH,  
Deputy Clerk.

(SEAL)

**EXHIBIT No. 2**

In the United States District Court for the Eastern  
Division of the Eastern Judicial District  
of Missouri.

In the Matter of

Christopher Engineering Company,  
a corporation,

Debtor.

In proceedings  
for the  
reorganization  
of a corporation.  
No. 10947

**Order Approving Petition and Appointing Trustee.**

At St. Louis, in said division of said district, this 27 day  
of December, 1943.

This cause, coming on to be heard on the petition of  
Christopher Engineering Company, the above-named  
debtor, praying that proceedings be had under Chapter X  
of the Act of Congress relating to bankruptcy, and it  
appearing that no notice of said hearing should be given,  
and after hearing attorneys for said Debtor in favor of  
said petition,

Now, upon said petition, and all the proceedings had  
before me at the said hearing, and due deliberation having  
been had thereon; the

**Court Does Find**

1. That the indebtedness of Christopher Engineering  
Company, the above-named debtor, liquidated as to amount  
and not contingent as to liability, is less than Two Hundred  
and Fifty Thousand Dollars (\$250,000.00).

2. That Jerome F. Duggan, Esq., is a disinterested per-  
son within the meaning of Section 158 of the Act of Con-  
gress relating to bankruptcy and is qualified to be the  
trustee herein; and the

**Court Is Satisfied and Does Find**

3. That the said petition of Christopher Engineering Company, said debtor, complies with the requirements of Chapter X of said Act.

4. That the said petition of Christopher Engineering Company, said debtor, has been filed in good faith; and it is

**Ordered, Adjudged and Decreed**

5. That said petition be, and it hereby is, approved.

6. That Jerome F. Duggan, Esq. be, and he hereby is, appointed trustee of the estate of said debtor, and said trustee upon filing a bond, as hereinafter provided, shall be vested with all the title and, to the extent consistent with said Chapter X, shall be vested with the same rights, shall be subject to the same duties, and shall exercise the same powers as a trustee appointed pursuant to Section 44 of said Act, and shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of said debtor.

7. That within five (5) days after the entry of this order, the said trustee shall qualify by entering into bond to the United States in the sum of Twenty-five Thousand Dollars with such sureties as shall be approved by this court, conditioned for the faithful performance of his official duties.

8. That said trustee be, and he hereby is, authorized to operate the business and manage the property of said debtor until such time as this court shall otherwise prescribe, and during such operation and management, the said trustee shall file with this court, in duplicate, not later than the 15th day of each month, a report and summary of the operations of the business and the management of the



property of the within estate during the preceeding month, which report shall include a classified statement of receipts and disbursements, indebtedness incurred, credit extended, contractual and other obligations assumed, and a profit and loss statement.

9. That without in any way limiting the generality of paragraphs numbered 6 and 8 hereof, and to the extent consistent with Chapter X of said Act, said trustee shall have full power and authority until the further order of this court.

(a) To employ, discharge and fix the compensation, salaries and wages of all managers, agents, employees and servants, as he may deem necessary and advisable for the proper operation of the business and the management, preservation and protection of the property of said debtor;

(b) To purchase or otherwise acquire for cash or on credit, such materials, equipment, machinery, supplies, services or other property, as he may deem necessary and advisable in connection with the operation of said business and the management and preservation of said property;

(c) To sell merchandise, supplies and other property, and to render services, for cash or on credit;

(d) To enter into any contracts incidental to the normal and usual operation of said business and the management and preservation of said property;

(e) To keep the property of the within estate insured in such manner and to such extent as he may deem necessary and advisable;

(f) To collect and receive all rents, issues, income, and profits, and all outstanding accounts, things in action and credits due or to become due to the within estate, and to

hold and retain all monies thus received to the end that the same may be applied under this and different or further orders of this court;

(g) To do any and all such things and to incur such other expenses as may be necessary and advisable in the proper management and conduct of the affairs of said debtor and in the preservation and protection of the property and assets of the within estate;

(h) To institute, prosecute, defend, compromise, adjust, intervene in or become a party to such other actions or proceedings in law or in equity, in state or federal courts, as may in his judgment be necessary or advisable for the protection, maintenance and preservation of the property and assets of the within estate.

10. That until the further order of this court, said trustee, in his discretion, be, and he hereby is, authorized to pay, from time to time out of any and all funds now or hereafter coming into his hands and available for such purposes;

(a) All taxes and similar charges lawfully incurred in the operation of the business and the preservation and maintenance of the property and assets of the within estate since the filing of said petition;

(b) All proper expenses and obligations incurred by him on or after the date of this order in operating the business and preserving and maintaining the property and assets of the within estate, as herein authorized, including among other expenses and obligations, the reasonable wages, salaries and compensation of all managers, agents, employees and servants, other than officers, employed by him;

(c) The cost of maintaining the corporate existence of said debtor, including necessary expenses for the preservation of records;

(d) The expense of printing and mailing and of publishing notices to creditors, stockholders and all other parties in interest of proceedings taken hereunder, and of printing the pleadings, motions, petitions and orders now on file or hereafter filed in this case reasonably necessary to be printed.

11. That said trustee shall close the present books of account of said debtor, as of the close of business on the date of the entry of this order, and shall open new books of account, as of the opening of business on the next succeeding business day, in which new books of account he shall cause to be kept proper account of his earnings, expenses, receipts, disbursements and all obligations incurred and transactions had in the operation of the business and the management, preservation and protection of the property of the within estate; and said trustee shall preserve proper vouchers for all payments made on account of such disbursements.

12. That said trustee be, and he hereby is, directed to investigate the acts, conduct, property, liabilities and financial conditions of said debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and shall make and deliver a report thereon to the judge not later than sixty (60) days from the date hereof, and, within ten (10) days after the delivery of such report, shall make application to the judge for a direction as to the form and manner of a brief statement thereof to be submitted to the creditors and stockholders and such other persons as the judge may designate.

13. That the 8th day of February, 1944, be, and it hereby is, fixed as the time and place for the hearing of objections to the retention in office of Jerome F. Duggan, Esq., as

trustee of said debtor, upon the ground that he is not qualified or not disinterested as provided in Section 156 of said Act.

14. That until final decree or the further order of this court, all creditors and stockholders, and all sheriffs, marshals and other officers, and their respective attorneys, servants, agents, and employees, and all other persons, firm, and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity against said debtor or said trustee in any court, or from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other processes for the purpose of impounding or taking possession of or interfering with or enforcing a lien upon any property owned by or in the possession of the said debtor or said trustee, and from doing any act or thing whatsoever to interfere with the possession or management by said debtor or said trustee of the property and assets of the within estate, or in any way interfere with said trustee in the discharge of his duties herein, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this court over said debtor and said trustee and their respective properties and all persons, firms or corporations owning any lands or buildings occupied by said debtor or said trustee or wherein is contained any property of the within estate be, and they hereby are, jointly and severally, stayed, pending the further order of this court, from removing or interfering with any such property. The proceedings in equity now pending in the Circuit Court of the City of St. Louis, State of Missouri, Division No. 3 thereof, Cause No. 68722, entitled Joe Dubman, plaintiff v. Christopher Engineering Company, et al., defendants, be, and it is hereby,

stayed, and J. F. Duggan, heretofore appointed Receiver in said Circuit Court proceedings be, and he is hereby, enjoined and restrained from taking any steps or action of whatsoever kind or nature affecting the property of the debtor corporation.

15. That the said trustee be, and he hereby is, directed to give notice of the hearings fixed herein at least thirty (30) days prior to the date of said hearings by mailing such notice to the creditors and stockholders of said debtor, as the same may appear upon the debtor's records or may be otherwise known to said trustee.

16. That this court reserves full right and jurisdiction to make at any time and from time to time such orders for the purpose of vacating, amplifying, extending, limiting or otherwise modifying this order, as the court shall deem proper.

Geo. H. Moore,  
United States District Judge.

Endorsed:

"Filed Dec. 27, 1943

Jas. J. O'Connor,  
Clerk."

### **EXHIBIT No. 3**

**Entry on Clerk's Docket, District Court of United States  
for the Eastern Division of the Eastern Judicial  
District of Missouri:**

"Dec. 29, 1943 Bond of Jerome F. Duggan, Esq., as Trustee of Debtor, in the penal sum of \$25,000.00, presented, approved and filed."

**EXHIBIT No. 4**

**IN THE DISTRICT COURT OF THE UNITED STATES,  
EASTERN DIVISION, EASTERN JUDICIAL  
DISTRICT OF MISSOURI**

In re:

**CHRISTOPHER ENGINEERING CO.,**

A Corporation.

Debtor.

No. 10947

**PETITION OF TRUSTEE**

Comes now Jerome F. Duggan, Trustee in the above entitled cause, and shows to the Court that heretofore your Trustee has received as a stockholder of National Aircraft Company, a corporation, all of the assets of said National Aircraft Corporation, a corporation; and that your Trustee considered same as an asset of the debtor corporation, subject to the further order of this Court, and that this Court heretofore has enjoined any and all persons from interfering with your Trustee concerning said property and assets of National Aircraft Corporation, and your Trustee now states that since said orders aforesaid, bankruptcy proceeding have been instituted in the Federal Court at Indianapolis, Indiana, and your Trustee is in need of counsel to represent him in said bankruptcy proceedings.

(S) JEROME F. DUGGAN,

Trustee.

Subscribed and sworn to before me this 24th day of January, 1944.

(SEAL)

(S) LOUISE D. O'CONNELL

Notary Public.

My commission expires March 31st, 1945.

ENDORSED:

Filed Jan. 24, 1944,

Jas. J. O'Connor, Clerk.

United States of America }  
Eastern District of Missouri } ss :

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original PETITION OF TRUSTEE, filed January 24, 1944, In Re: CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, Cause No. 10947, pending in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 22nd day of April, A. D., 1944.

JAMES J. O'CONNOR, Clerk.

By ANNICE W. KINDER,

Deputy Clerk.

(SEAL)

### EXHIBIT No. 5

IN THE DISTRICT COURT OF THE UNITED  
STATES, EASTERN DIVISION, EASTERN  
JUDICIAL DISTRICT OF MISSOURI

In re:

CHRISTOPHER ENGINEERING CO.,

A Corporation,

Debtor.

No. 10947



**ORDER**

The Court having seen and examined the verified petition of Jerome F. Duggan, Trustee, for employment of counsel in the bankruptcy proceeding in Indianapolis, Indiana, hereby sustains said petition and said Trustee is hereby

ORDERED to employ Phillip O'Neill, attorney at law, of Anderson, Indiana, and Hubert Hickam, Attorney at Law, of Indianapolis, Indiana, to represent Jerome F. Duggan, Trustee, in the aforesaid proceedings.

(S) GEO. H. MOORE, Judge.

Filed Jan. 24, 1944.

**EXHIBIT NO. 6**

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DIVISION OF THE EASTERN  
JUDICIAL DISTRICT OF MISSOURI

In the Matter of  
CHRISTOPHER ENGINEERING  
COMPANY, A Corporation,  
Debtor.

In proceedings for  
the reorganization  
of a corporation.  
No. 10947

CLAIM OF A. B. CHRISTOPHER  
TO THE HONORABLE GEORGE H. MOORE, JUDGE  
OF THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MISSOURI:

The petition of A. B. Christopher respectfully represents:

(1) Your petitioner is the owner of 288½ shares of no par value stock of the National Aircraft Company, an Indiana corporation.

(2) That on or about the 18th day of January, 1944, Jerome F. Duggan, Trustee herein, filed his petition for an order directing your petitioner to forthwith endorse, deliver and surrender to said Trustee his stock holdings and stock certificates in said National Aircraft Company, and on said same date, this Court entered its order directing your petitioner to endorse, deliver and surrender his stock holdings aforesaid to said Trustee, and said order further provided that said delivery of said stock pursuant to said order should not in any way affect your petitioner's claim thereto. Your petitioner states that in compliance with said order, he did endorse and deliver to said Trustee his aforementioned 288½ shares of stock of the National Aircraft Company.

(3) Your petitioner states that he is entitled to the immediate possession of said 288½ shares of stock of the National Aircraft Company aforementioned.

WHEREFORE, your petitioner prays that this Court enter its order finding that your petitioner is the sole owner of the aforementioned 288½ shares of the stock of the National Aircraft Company, and that he is entitled to the immediate possession of said stock, and that Jerome F. Duggan, Trustee herein, be directed to forthwith turn over and deliver said shares of stock to your petitioner, and that the Court enter such further and other orders as it may consider proper in the premises.

A. B. CHRISTOPHER.

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Attorneys for Petitioner.

State of Missouri }  
City of St. Louis } ss:

I, A. B. Christopher, the petitioner named in the fore-

going petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

**A. B. CHRISTOPHER.**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1944.

\_\_\_\_\_  
Notary Public.

My commission expires: \_\_\_\_\_.

Endorsed: "Filed

Feb. 25, 1944

Jas. J. O'Connor,  
Clerk."

United States of America }  
Eastern District of Missouri } ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original Claim of A. B. CHRISTOPHER filed February 25, 1944 in the Matter of CHRISTOPHER ENGINEERING COMPANY, a Corporation, Debtor, in Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D., 1944.

**JAMES J. O'CONNOR,**

Clerk.

By **JOHN A. OLDENDORPH,**

Deputy Clerk.

(SEAL)

**EXHIBIT NO. 7**

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DIVISION OF THE EASTERN  
JUDICIAL DISTRICT OF MISSOURI**

In the Matter of  
**CHRISTOPHER ENGINEERING**  
COMPANY, A Corporation,  
Debtor.

In Proceedings for  
the reorganization  
of a corporation.  
No. 10947

**CLAIM OF J. M. BROWN**

**TO THE HONORABLE GEORGE H. MOORE, JUDGE  
OF THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MISSOURI:**

The petition of J. M. Brown respectfully represents:

(1) Your petitioner is the owner of 288½ shares of no par value stock of the National Aircraft Company, an Indiana corporation.

(2) That on or about the 18th day of January, 1944, Jerome F. Duggan, Trustee herein, filed his petition for an order directing your petitioner to forthwith endorse, deliver and surrender to said Trustee his stock holdings and stock certificates in said National Aircraft Company, and on said same date this Court entered its order directing your petitioner to endorse, deliver and surrender his stock holdings aforesaid to said Trustee, and said order further provided that said delivery of said stock pursuant to said order should not in any way affect your petitioner's claim thereto. Petitioner states that at the time of the entry of said aforementioned order, he was not in the possession of said 288½ shares of the stock of the National Aircraft Company for the reason that he has previously, on or about the 29th day of November, 1943, endorsed

and delivered all of said shares of stock to B. Sherman Landau as collateral security for a loan made by B. Sherman Landau to your petitioner in the principal amount of \$6,000.00 which said loan was made by B. Sherman Landau to your petitioner at the same time said shares of stock were endorsed and delivered to B. Sherman Landau as security therefor; that, however, said B. Sherman Landau complied with said aforementioned order of this Court and did turn over and deliver said shares of stock to said Jerome F. Duggan, Trustee.

(3) Petitioner states that he is the sole and absolute owner of said 288½ shares of capital stock of the National Aircraft Company, subject to the lien of said B. Sherman Landau in the principal sum of \$6,000.00, and that he is entitled to immediate possession of said shares of stock subject to said aforementioned lien.

Wherefore, your petitioner prays that this Court enter its order finding that your petitioner is the sole owner of the aforementioned 288½ shares of the capital stock of the National Aircraft Company, subject only to the lien of B. Sherman Landau securing the loan in the principal sum of \$6,000.00, and that he is entitled to the possession of said shares of stock subject to said aforementioned lien, and that Jerome F. Duggan, Trustee herein, be directed to forthwith turn over and deliver said shares of stock to your petitioner subject to said aforementioned lien of B. Sherman Landau, and that this Court enter such further and other orders as it considers proper in the premises.

(S) J. M. BROWN

J. M. BROWN,  
Attorney pro se.

State of Missouri, } ss:  
City of St. Louis, }

I, J. M. Brown, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

**J. M. BROWN.**

Subscribed and sworn to before me this 14th day of February, 1944.

**HENRY J. JACOBMEYER,**

Notary Public.

(SEAL)

My Commission expires June 2, 1944.

Endorsed: "Filed

Feb. 25, 1944

Jas. J. O'Connor,  
Clerk."

United States of America  
Eastern District of Missouri }

ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original CLAIM OF J. M. BROWN, filed February 25, 1944, In the Matter of CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, In Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D. 1944.

**JAMES J. O'CONNOR,**

Clerk.

By **JOHN A. OLDENDORPH,**

Deputy Clerk.

(SEAL)

**EXHIBIT NO. 8**

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DIVISION OF THE EASTERN  
JUDICIAL DISTRICT OF MISSOURI**

**In the Matter of  
CHRISTOPHER ENGINEERING  
COMPANY, A Corporation,**

**Debtor.**

**In Proceedings for  
the reorganization  
of a corporation.  
No. 10947**

**CLAIM OF B. SHERMAN LANDAU**

**TO THE HONORABLE GEORGE H. MOORE, JUDGE  
OF THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MISSOURI:**

The petition of B. Sherman Landau respectfully represents:

(1) That on or about the 29th day of November, 1943, your petitioner loaned to J. M. Brown the principal sum of \$6,000.00 and said J. M. Brown did, on that date, endorse and deliver to your petitioner, as security for said loan, 288½ shares of the capital stock of the National Aircraft Company, an Indiana corporation; that no part of said loan of \$6,000.00 or interest due thereon, has been repaid to your petitioner, and that the full amount thereof, both principal and interest, is past due and unpaid.

(2) That on or about the 18th day of January, 1944, pursuant to an order of this Court of said same date, your petitioner delivered to Jerome F. Duggan, Trustee herein, said 288½ shares of said aforementioned stock, which said stock is now in the possession of said Trustee; that the order requiring your petitioner to deliver said stock to



said Trustee provided that your petitioner's claim would not in any way be affected by the delivery thereof to said Trustee.

(3) That said stock is subject to your petitioner's lien for the full amount of said unpaid loan in the principal amount of \$6,000.00, plus accrued interest which is past due, and that your petitioner is entitled to the immediate possession of said 288½ shares of said aforementioned stock.

WHEREFORE, your petitioner prays that this Court enter its order directing the said Jerome F. Duggan, Trustee herein, to forthwith turn over and deliver to your petitioner said aforementioned 288½ shares of the capital stock of National Aircraft Company, and that your petitioner be authorized by this Court to liquidate said stock and apply the net proceeds derived therefrom as a credit on the aforementioned indebtedness due him from said J. M. Brown, and that this Court further direct your petitioner as to what steps to take with the proceeds received from the liquidation of said shares of stock in the event the proceeds received from the sale thereof by your petitioner are in excess of the indebtedness aforementioned due him from said J. M. Brown.

B. SHERMAN LANDAU

B. SHERMAN LANDAU

Attorney pro se.

State of Missouri	}	ss:
City of St. Louis		

I, B. Sherman Landau, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

B. SHERMAN LANDAU

Subscribed and sworn to before me this 14th day of February, 1944.

**HENRY J. JACOBSMEYER,**  
Notary Public.

(SEAL)

My Commission expires June 2, 1944.

Endorsed: "Filed  
Feb. 25, 1944

Jas. J. O'Connor  
Clerk."

**UNITED STATES OF AMERICA**  
**EASTERN DISTRICT OF MISSOURI** } ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original CLAIM OF B. SHERMAN LANDAU filed February 25, 1944, In the Matter of CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, In Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D. 1944.

**JAMES J. O'CONNOR,**  
Clerk.

By **JOHN A. OLDENDORPH,**  
Deputy Clerk.

(SEAL)

**EXHIBIT NO. 9**

CAPTION 10947

**PLAN OF REORGANIZATION**

TO THE HONORABLE GEORGE H. MOORE, JUDGE  
OF THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DIVISION OF THE EASTERN  
JUDICIAL DISTRICT OF MISSOURI:

The following plan of reorganization is submitted by certain of the stockholders whose names are subscribed hereunto as and for the plan of reorganization for the debtor company:

**I****PERSONS NOT AFFECTED BY THE PLAN**

1. Holders of the common stock of the corporate debtor will not be affected by the plan.

**PERSONS AFFECTED BY THE PLAN**

1. *Claims Due the United States of America.*

The debtor, as reorganized, hereby assumes and agrees to pay in full all tax liabilities owing by the debtor, or the receivers or trustees thereof, to the United States of America. The claims of the United States shall have the same priority and preference over claims of other creditors of the debtor, as reorganized, with respect to the assets thereof, as would lie against the assets of the debtor, or the trustees or receivers thereof, had these proceedings not intervened, and the United States of America is hereby granted the same remedies against the debtor, as reorganized, and its assets with regard to the collection of such liabilities as it had against the debtor. All statutes of limitation upon the collection of such claims shall be suspended

during the time these proceedings are pending and for such additional period of time such claims or any part thereof remain unpaid. Subject to its approval the Court shall retain jurisdiction over the assets herein dealt with and over any and all persons, firms, or corporations to whom said assets may be transferred, and over all parties appearing herein for the purpose of carrying out and giving effect to any and all provisions of the plan and the decree confirming the same in so far as said plan effects and applies to tax claims of the United States of America.

## 2. *Preferred Claims.*

It is proposed that all claims allowed by this Court and entitled to priority under the Bankruptcy Act will be paid in full as soon as funds are available for said purpose.

## 3. *Secured Creditors.*

All claims of secured creditors as allowed by this Court will be paid in full as soon as funds are available for that purpose.

## 4. *General Creditors.*

All claims of general creditors allowed by this Court will be paid in full in the following manner:

A new class of first preferred stock to be issued by the reorganized debtor company at \$100.00 par value, being 4% cumulative preferred stock, will be issued to creditors in full payment of their claims, stock of a par value equal to the amount of the allowed claim will be delivered to each creditor whose claim is allowed in this proceeding. Any part of said preferred stock may be called by the debtor at any time at par plus accumulated and unpaid interest.

### 5. *Preferred Stockholders.*

The outstanding preferred stock of the debtor corporation shall be turned in to debtor company for cancellation and in lieu thereof, the debtor shall issue to said stockholders an equal number of shares of second preferred stock equal in par value to the preferred stock being surrendered. This second preferred stock shall be subordinate to the first preferred stock referred to in paragraph No. 4 above in the event of liquidation, shall be of \$100.00 par value and shall bear interest at the rate of 6% and shall be non-cumulative, non-voting preferred stock.

### 6. *Costs and Allowances.*

The debtor will pay in cash all costs and allowances in this cause within thirty days after the same have been determined and allowed subsequent to the approval and confirmation of this plan of reorganization.

### 7. *Provision for Non-Consenting Classes of Claimants.*

Should the required number of any class of claimants who are required to consent to the plan refuse or withhold such consent, then in that event, the debtor shall submit a new and modified plan and this plan will be abandoned.

WHEREFORE, it is respectfully prayed that this Court enter an order approving and confirming this proposed plan.

**J. M. BROWN**

Stockholder

UNITED STATES OF AMERICA  
STATE OF MISSOURI  
CITY OF ST. LOUIS

SS:

I, J. M. Brown, a stockholder of Christopher Engineering Company, a corporation, the debtor mentioned and

described in the above plan of reorganization, do hereby make solemn oath that the statements therein contained are true to the best of my knowledge, information and belief.

**J. M. BROWN**

Subscribed and sworn to before me this 20th day of March, 1944.

**NOAH WEINSTEIN**

**Notary Public**

My Commission expires March 13, 1948.

Endorsed:

"Filed March 22, 1944

Jas. J. O'Connor,  
Clerk."

UNITED STATES OF AMERICA  
EASTERN DISTRICT OF MISSOURI

} SS:

I, JAMES J. O'CONNOR, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original plan of Reorganization filed March 22, 1944. In the Matter of CHRISTOPHER ENGINEERING COMPANY, a Corporation; Debtor. In Proceedings for the reorganization of a corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court as St. Louis, Missouri, this 5th day of January, A. D., 1945.

**JAMES J. O'CONNOR,**

**Clerk.**

**By Raymond E. Walczyk,**

**Deputy Clerk.**

(SEAL)

**EXHIBIT 10**

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF INDIANA,  
INDIANAPOLIS DIVISION**

In the matter of  
NATIONAL AIRCRAFT CORPORA-  
TION, a corporation,  
Bankrupt.

No. 9401 B.

PETITION AND PROOF OF CLAIM OF J. M. BROWN  
STATE OF MISSOURI }  
CITY OF ST. LOUIS } ss:

J. M. Brown, of the City of St. Louis, State of Missouri,  
being duly sworn, deposes and says:

1) That he is filing this petition and proof of claim in this proceeding with the express reservation of his objections to the jurisdiction of this Court herein, which position he has heretofore made known to this Court, and this petition & proof of claim is filed for the purpose of protecting and preserving his rights herein until a final determination of the jurisdictional question involved is had.

2) That the United States Government entered into a contract with the National Aircraft Corporation, the bankrupt herein, being Contract No. W 535 a c 26259, and that under and pursuant thereto, petitioner and A. B. Christopher rendered services and incurred expenses as set forth in the itemized statement which is attached hereto, marked Exhibit "A," and by express reference made a part hereof; that the United States Government and/or the National Aircraft Corporation, the bankrupt herein, were, at and before the filing against the National Air-



craft Corporation of the petition for adjudication of bankruptcy, and still are, justly and truly indebted to petitioner, J. M. Brown, in the sum of \$19,000.00; that the said claim of A. B. Christopher was, on the 1st day of April, 1944, after the filing of the said petition, duly assigned by the said A. B. Christopher to this deponent and the above-named bankrupt and/or the United States Government is, by reason of the said assignment, justly and truly indebted to this deponent in the said aforementioned sum of \$19,000.00, a copy of said assignment being attached hereto and marked Exhibit "B," accordingly, the total sum due deponent is \$38,000.00; That petitioner is entitled to assert his said claim against the United States Government and/or the National Aircraft Corporation, the bankrupt herein.

3) That the consideration of said debt is set forth in Exhibit "A" which is attached hereto and by express reference made a part hereof.

4) That no part of said debt has been paid except as set forth in said Exhibit "A."

5) That there are no set-offs or counter-claims to said debt.

6) That petitioner does not hold, and has not, nor has any person, by his order or to petitioner's knowledge or belief, for his use, had or received, any security or securities for said debt.

WHEREFORE, your petitioner prays that:

a) His claim in the amount of \$34,000.00 be allowed herein;

b) He be permitted to assert his claim hereinabove set forth, against the United States Government in the

name of the National Aircraft Corporation and/or its  
Trustee in bankruptcy.

/s/ J. M. Brown

Subscribed and sworn to before me this 31st day of Au-  
gust, 1944.

(s) Noah Weinstein  
Notary Public

My commission expires March 13, 1948.

Seal.

**EXHIBIT "A"**

Suite No. 315

**J. M. BROWN**  
705 Olive Street,  
St. Louis,  
Missouri.

August 29, 1944.

**TO THE NATIONAL AIRCRAFT CORPORATION, EL-  
WOOD, INDIANA.**

J. M. Brown salary for year 1943.....	\$18,000.00
J. M. Brown traveling expenses, approximately	1,000.00
A. B. Christopher salary for year 1943 assigned to J. M. Brown .....	18,000.00
A. B. Christopher traveling expenses, assigned to J. M. Brown, app. ....	1,000.00
<b>Total.....</b>	<b>\$38,000.00</b>
Credits by payment .....	4,000.00
<b>Amount due .....</b>	<b>\$34,000.00</b>

**EXHIBIT "B"****AGREEMENT**

**THIS AGREEMENT**, made and entered into in the City of St. Louis, Missouri, this 1st day of April, 1944, by and between A. B. Christopher, Party of the First Part, and J. M. Brown, Party of the Second Part, **WITNESSETH THAT:**

A. B. Christopher party of the first part, states that he is owner of four (4) certificates Numbered 117-119-121 and 123 totaling two hundred eighty-eight and one-half (288½) shares of the capital stock of the National Aircraft Corp. an Indiana Corp. (this stock was delivered to Jerome Duggan Esq.: Trustee for Christopher Engineering Co. a corp. in Bankruptcy re-organization, under Court order) A. B. Christopher party of the first part states that he is the sole owner of Thirty-Three Hundred (3300) shares of the Capital stock of the Christopher Engineering Co., a Missouri corporation, some of this stock is held for me. I am the owner of an one-half (½) undivided interest in the following partnerships composed of A. B. Christopher and J. M. Brown; Christopher Engineering & Manufacturing Co., Christopher Tool Co. and Christopher Aircraft Co. and said party of the first part is a creditor of said various described corporations and partnerships.

Witnesseth, that the said party of the first part A. B. Christopher, for and in consideration of the sum of one hundred (\$100.00) dollars and other valuable considerations, paid by said party of the second part J. M. Brown. the receipt is hereby acknowledged, does by these presents, remise, release, assign, sell, transfer, give, convey and **QUIT CLAIM** any right, title or interest that I have in the above capital stock shares, interest or claims as stock-

holder, creditor, officer and partner in or against the above mentioned corporations and partnerships; unto J. M. Brown the said party of the second part; to have and to hold the same together with all rights, interests and privileges to the same belonging unto the said party of the second part, and to his heirs and assigns forever, granting, making, constituting, and appointing J. M. Brown party of the second part, full power and authority to perform all and every act whatsoever, requisite and necessary to transfer unto party of the second part, all my right title and interest, to any stock shares, claims or creditors claim assignment or interest I may have in or against the above mentioned corporations and partnerships with full power of substitution.

That neither the said party of the first part, nor his heirs nor any persons or person for him or in his name or behalf, shall or will hereafter claim or demand any right title or interest in the capital stock shares, claims or creditors claims, assets in the above mentioned corporations and partnerships, but he, they and every one of them shall by these presents, be excluded and forever barred.

In Witness Whereof, the said party of the first part has executed these presents the day and year first above written.

A. B. Christopher.

STATE OF MISSOURI  
CITY OF ST. LOUIS

ss:

On this 1st day of April, 1944 before me personally appeared A. B. Christopher, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed. In testimony whereof, I have hereunto set

my hand and seal in the city and state aforesaid this day and year above written.

My commission expires Nov. 28, 1947.

John A. Bourg,  
Notary Public.

Entry on Petition and Proof of Claim of J. M. Brown: Filed September 2, 1944. Carl Wilde, Referee in Bankruptcy, 10 A. M.

United States of America }  
Southern District of Indiana. } ss:

I, Albert Ward, hereby certify that I am one of the Referees in Bankruptcy of the District Court of the United States for the Southern District of Indiana, and that the foregoing is a true and complete copy of so much of the record of proceedings in the above-entitled cause in bankruptcy pending before me, as shows the petition and proof of claim of J. M. Brown, filed with former Carl Wilde, Referee in Bankruptcy, before whom this case was then pending, in the sum of \$34,000.00, on the 2nd day of September, 1944.

Dated at Indianapolis, in said District, this 3rd day of February, 1945.

(Signed) ALBERT WARD

Referee in Bankruptcy.

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# SUPREME COURT OF THE UNITED STATES.

Nos. 418-419.—OCTOBER TERM, 1945.

Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company and National Aircraft Corporation, Petitioner,

418                      vs.                      James C. Sansberry, Trustee of the Estate of National Aircraft Corporation.

National Aircraft Corporation,  
Petitioner,

419                      vs.                      James C. Sansberry, Trustee of the Estate of National Aircraft Corporation.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 4, 1946.]

Mr. Justice RUTLEDGE delivered the opinion of the Court.

These cases involve, as the Circuit Court of Appeals said 149 F. 2d 458, "a clash of jurisdiction" between two District Courts. They raise important questions as to the construction of certain sections of Chapter X of the Bankruptcy Act, 11 U. S. C. §501 *et seq.* Two corporations, Christopher Engineering Company and National Aircraft Corporation, are concerned, as is the question of their relationship as parent and subsidiary corporations.

On December 27, 1943, Christopher Engineering Company filed a petition for reorganization under Chapter X in the District Court for the Eastern Division of the Eastern Judicial District of Missouri. On the same day the petition was approved as properly filed and petitioner Duggan was appointed trustee. Approximately a month later, January 21, 1944, an involuntary petition in ordinary bankruptcy was filed by its creditors against National Aircraft Corporation, which petitioner Duggan claims was a subsidiary of Christopher, in the District Court for the Southern District of Indiana.<sup>1</sup> A petition for the appointment

<sup>1</sup>On January 19, 1944, an Indiana state court appointed a receiver for National. The receiver never qualified, however, the qualification having been delayed because of a restraining order entered by the District Judge in the Christopher reorganization proceedings.

of a receiver in bankruptcy for National was filed and referred to a referee who took the matter under advisement after holding a hearing at which Duggan, as trustee of Christopher, appeared by his attorney. On February 7, 1944, the involuntary petition being unopposed, the referee entered an order of adjudication, and the following day appointed respondent Sansberry as receiver. On March 7, 1944, the first meeting of National's creditors was held. At that meeting Brown, its secretary-treasurer, testified that in December, 1942, he and A. B. Christopher<sup>2</sup> had purchased all the capital stock of National and that, although the certificates had been turned over to Duggan, "there is no reason that he [Brown] knows of why such capital stock should be considered the property of Christopher Engineering Company, instead of the property of himself and Christopher, individually." At this meeting also the receiver Sansberry was selected as trustee in bankruptcy for National.

On March 21, 1944, Sansberry, acting as trustee, filed a petition for an order authorizing him to offer for sale and to sell the tangible personal property and the real estate belonging to National. The referee ordered that a meeting of creditors be held to consider this petition. Notice of the meeting was sent to Duggan and also to the attorneys for Brown. The meeting was held on April 4, 1944. Neither Duggan nor Brown appeared. No objection to the proposed sale was made except by the United States Army Air Force, which claimed certain personal property. But it was expressly stated on its behalf that there was no objection to the entering of an order for the sale covering any other property of National. On April 6 the referee entered an order directing that the real and personal property of National, with certain exceptions, be offered for public sale on April 20, 1944. Notice of the sale was sent to Duggan and Brown among others.

On April 19, the day prior to the sale, a petition was filed on behalf of National in the reorganization proceedings of Christopher in the Missouri District Court.<sup>3</sup> On the same day that court issued an injunction against holding the sale of National's prop-

<sup>2</sup> A. B. Christopher was president of the Christopher Engineering Company and Brown was vice president of the same company.

<sup>3</sup> The petition was signed "National Aircraft Corporation, a corporation. By J. M. Brown, Petitioner." It recited that "the majority of the capital stock of this subsidiary corporation having power to vote for the election of directors is owned directly by the debtor or indirectly through nominees."



erty. The decree contained a finding that National is a wholly owned subsidiary of the Christopher Engineering Company.

Immediately preceding the sale on April 20, copies of the injunction order were served upon Sansberry and the auctioneer; but they proceeded with the sale. On May 3, after the trustee had filed his report to the effect that the sale had been advantageous and after a hearing had been held, the referee approved and confirmed the sale. He then granted petitions for review of this order which were filed by Duggan and by the National Aircraft Corporation per Brown.<sup>4</sup> The District Court affirmed the referee's order, as did the Circuit Court of Appeals, one judge concurring specially and one dissenting. 149 F. 2d 548. We granted certiorari. 326 U. S. —.

The Circuit Court of Appeals held, in the first place, that for the District Court in Missouri to obtain jurisdiction over National and its assets, it had to be established as a "jurisdictional fact" that "National was a subsidiary of Christopher, not only on April 19, 1944, but on December 27, 1943, when Christopher filed its petition for reorganization, and also on January 21, 1944, when the involuntary petition in bankruptcy was filed [in the District Court] in Indiana." This fact, the court found, had not been established; for the order of the Missouri court did not state that Christopher owned any stock of National prior to April 19, 1944; and, as April 19 was the date as of which the Missouri court's determination was effective, "we must presume that there was no evidence before it that the relationship existed earlier." 149 F. 2d at 550.

<sup>4</sup>In granting the petitions for review, the referee noted that "neither petition was in duplicate as required by Rule 19 of the Rules of the District Court of the United States for the Southern District of Indiana, and neither petition was accompanied by brief as required by said Rule." He also noted that copies of the petitions had not been served upon the trustee, as required by the provisions of § 39(c) of the Bankruptcy Act, 11 U. S. C. § 67(c). He stated: "It seems obvious that the failure of the petitioners for review to comply with the Rules of Court and the provisions of the Bankruptcy Act in respect to the filing of such petitions would justify the denial thereof. In order, however, to resolve all doubts in favor of the petitioners and so that the matter may be presented to the Judge of the United States District Court for the Southern District of Indiana, the Referee finds that said petitions should be granted." The referee's granting of the petitions, despite petitioners' failure to comply with § 39(c), appears to be justified because the record indicates that the trustee waived service. It has been said that the requirement of service is not jurisdictional. 2 Collier, Bankruptcy (14th ed.) § 39.24, n. 15.

The referee denied petitions for a stay of enforcement of the order approving and confirming the sale. No appeal was taken from the order of denial.

In the second place, the Court of Appeals held that under Chapter X, when a subsidiary corporation has been adjudicated a bankrupt in one District Court and its property is transferred to a trustee, it may not file a petition for reorganization in another District Court where the reorganization proceeding of its parent is pending.<sup>5</sup> And finally the court held that the petition for reorganization was improperly filed in any case, since it was not shown that Brown was authorized to file it.

6  
 We come to different conclusions. Regardless of whether National's petition for reorganization in the Missouri proceedings was properly filed on April 19, the Indiana Court, on being notified that the petition had been filed and approved and that an injunction had issued, should have stayed immediately the sale of National's assets. Section 113, 11 U. S. C. § 513, provides with respect to reorganization proceedings: "Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property, and may upon cause shown enjoin or stay until the petition is approved or dismissed the commencement or continuation of a suit against a debtor." It was on the authority of this section, we may assume,<sup>7</sup> that the in-

<sup>5</sup> See 149 F. 2d at 551-552 for the court's construction of the statute which led it to this conclusion, and compare the dissenting opinion, 149 F. 2d at 553, for a different construction.

<sup>6</sup> The petition was approved on the same day that it was filed. See notes 7 and 11.

<sup>7</sup> For the purposes of this case it is not necessary to decide whether the applicable section is § 113 or § 148, and we therefore expressly reserve that question.

Section 148 provides: "Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property." It might be urged that this section would apply since the petition had been "approved" in the sense of § 141, 11 U. S. C. § 541, which provides: "Upon the filing of a petition by a debtor the judge shall enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith or dismissing it if not so satisfied"; and that therefore, under § 148, the bankruptcy proceeding was automatically stayed and it was unnecessary for the injunction to issue.

The alternative view would be that the meaning of "approve" as used in §§ 113 and 148 is not the *ex parte* approval given immediately upon the filing of a petition under § 141 but the approval given after adversary proceedings under § 144, 11 U. S. C. § 544. See note 11 and text.

junction staying the sale of National's property was issued. As interpreted<sup>8</sup> the section declares that when a petition for reorganization has been filed by a corporation, the judge may stay pending proceedings. It does not differentiate between petitions filed by parent corporations and petitions filed by subsidiaries, nor does it distinguish petitions which have been filed correctly from those which have been filed erroneously with the reorganization court. It thus applies to National, whose petition for reorganization had been filed and against which a bankruptcy proceeding was pending.

Opportunity was afforded to interested parties to come into the reorganization proceeding in order to show that National's petition should not have been approved. See § 137, 11 U. S. C. § 537, which provides: "Prior to the first date set for the hearing provided in section 561 of this title," an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent,<sup>10</sup> by any stockholder of the debtor." And § 144, 11 U. S. C. § 544, provides, "If any answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied."<sup>11</sup> Thus, under §§ 137 and 144, an answer could be filed to National's

<sup>8</sup> See note 7.

<sup>9</sup> Section 161, 11 U. S. C. § 561, reads: "The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate."

In connection with § 161, see § 162, 11 U. S. C. § 562.

<sup>10</sup> National's petition for reorganization alleged: "This subsidiary corporation is unable to meet its debts as they mature. . . ."

<sup>11</sup> Under this section the District Court, if satisfied that the petition complies with the requirements of Chapter X and has been filed in good faith and that the material allegations are sustained by the proofs, may be approving the petition for the second time; for, as in the present case, he may have approved it in accordance with § 141, 11 U. S. C. § 541, for the first

petition, denying that National was a subsidiary of Christopher, and asking that the petition be dismissed. The judge would then be obliged to hold at least a summary hearing; see *In re Cheney Bros.*, 12 F. Supp. 609, 611,<sup>12</sup> a material allegation being controverted, and to decide the disputed issue on its merits.

In as much as the interested parties thus had an opportunity in the reorganization proceeding to dispute the allegations of National's petition that a parent-subsidiary relationship existed between it and Christopher and by doing so to have that issue determined on the facts, we think it plain that Congress intended that the same issue should not be tried collaterally in the bankruptcy proceeding.<sup>13</sup>

time at the time the petition was filed. See 10 Remington, Bankruptcy (1939) § 4466. Cf. note 7.

The order of approval under § 141, which consists of "first, a conclusion of law to the effect that the petition is sufficient in respect of its allegations, second, a finding of fact that the petition is filed in good faith," 10 Remington § 4453, having been made *ex parte*, is of course not conclusive. See note 7. See also the testimony of Mr. Harold Remington in Hearings before the Committee on the Judiciary of the House of Representatives on H. R. 8046, Subsequently Reported as H. R. 8046, 75th Cong., 1st Sess., 226-227. And see Gerdes, Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act (1938) 52 Harv. L. Rev. 1, 7, n. 38, for a suggestion that the time within which answers to the petition may be filed cannot be fixed until an order approving the petition, under § 141, has been entered. If this be the case, it would seem that a judge could not avoid this problem of double approval by not approving the petition until an answer had been received.

<sup>12</sup> Cf. Gerdes, Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act (1938) 52 Harv. L. Rev. 1, 7: "The statute contains no mandatory provision requiring notice of the hearing on the issues raised by an answer to be given to all creditors and stockholders entitled to controvert the allegations of the petition. If such notice is given, a determination of any issue tried at the hearing becomes conclusive [citing § 145, 11 U. S. C. § 545]. In the absence of such notice, recurrent trials of the same issues may be necessary. Once an order approving the petition has been entered, however, it may be possible to avoid the expense of giving notice to all creditors and stockholders and also avoid repeated trials by postponing the hearings until after the time to file answers has expired, and then trying all of such issues at the same time." Cf. also 10 Remington, Bankruptcy (1939) § 4466: "The possibility of successive orders of approval is probably more formal and theoretical than substantial and real, since the hearing upon all answers filed by creditors, indenture trustees, and stockholders would probably be consolidated."

<sup>13</sup> It might be argued that if the Circuit Court of Appeals was correct in holding that for the Missouri District Court to obtain jurisdiction over National it was necessary that National be a subsidiary of Christopher, not only on the date when National filed its petition for reorganization, but also when Christopher filed its petition and when the involuntary petition in bankruptcy was filed against National, then interested parties would not have an opportunity to controvert a material allegation of the petition, namely, that such a parent-subsidiary relationship did exist on those dates, since the peti-

But respondent relies especially upon § 149, 11 U. S. C. § 549, as allowing a collateral attack in the bankruptcy court upon the reorganization proceedings initiated by National. This section reads: "An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court." Respondent's position is that the Missouri District Court's approval of the petition upon its filing was not an order which had become final and that as a result the reorganization proceedings thereby initiated by National were subject to question in the bankruptcy forum.

Assuming arguendo that the *ex parte* order of approval, made upon the day the petition for reorganization was filed, was not a final order<sup>14</sup> and assuming also that, as respondent argues, "jurisdiction" within the meaning of this section does not have the limited meaning of "venue," the section nevertheless does not support the position taken. Congress in § 113, 11 U. S. C. § 513, explicitly provided that a reorganization court, upon the filing of a petition, could stay pending bankruptcy proceedings.<sup>15</sup> In the light of this provision it is scarcely possible that Congress intended that a collateral attack could be made in the bankruptcy forum, the proceedings in which had been stayed,<sup>16</sup> upon the proceedings in the reorganization forum.

But it is said that if this be the case, then § 149 has no meaning at all. We do not think this conclusion follows. Although, as we construe the Act, no collateral attack may be brought against

tion contained no such explicit statement. The answer would be, however, that the interested parties, first, could contend that such an allegation was required as a jurisdictional fact, see § 130(2), 11 U. S. C. § 530(2), and, second, if the mere general statement of the parent subsidiary relationship were to be taken to satisfy the requirement, if any, that it also existed on the prior dates, they could raise in answer to the proposition that it did not exist on these dates. It would then be for the reorganization court to determine the correctness of either contention or both.

48 Rep. 1916, 75th Cong., 2d Sess., 27, says that § 149 "is designed to foreclose all direct or collateral attack upon jurisdiction or venue once the period for appeal from an order approving a petition has expired." See for a discussion of the meaning of "final," Gerdes, Corporate Reorganization: Changes Effected by Chapter X of the Bankruptcy Act (1938) 52 Harv. L. Rev. 1, 7-8.

<sup>14</sup> See note 7 and text.

<sup>15</sup> Although the Missouri District Court enjoined only the sale, this was in effect an injunction against the entire bankruptcy proceedings.

<sup>16</sup> See *In re Long Island Properties*, 42 F. Supp. 323, to the effect that a judgment rendered by a state court in violation of a stay order that had been issued by a reorganization court was without effect in the reorganization.

the reorganization proceeding, at least in a bankruptcy forum, the proceedings in which the reorganization court has stayed, this does not mean that under other circumstances, where an order of approval is not final, § 149 would not allow the reorganization proceeding to be attacked collaterally in some other forum, in particular where "a prior . . . bankruptcy, mortgage foreclosure or equity receivership proceeding [or] . . . any act or other proceeding to enforce a lien against a debtor's property." § 113, 11 U. S. C. § 513, is not pending. Moreover, had the Missouri District Court not enjoined the bankruptcy proceeding, we may assume<sup>17</sup> that the bankruptcy court would have been correct in not ordering the sale of the assets of National halted.

"The problem involves, of course, not the ordinary power of one court of general jurisdiction to question the jurisdiction of another court of general jurisdiction. The jurisdiction of both the bankruptcy forum and the reorganization forum is derived from and is limited by the Bankruptcy Act, enacted in accordance with the congressional power "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." Constitution, Article 1, § 8. It was within the power of Congress to provide that a bankruptcy court could not permit an attack even on the usual grounds, to be made upon proceedings initiated in a reorganization court.<sup>18</sup> This power Congress exercised by permitting the reorganization court to stay, as it did,<sup>19</sup> the bankruptcy proceedings.

The exercise of this power, taken in relation to the facts at bar, was in pursuance of the congressional intention ordinarily to allow parent and subsidiary to be reorganized in a single proceeding,<sup>20</sup> thereby effectuating its general policy that the entire

<sup>17</sup> See note 14 and text; also note<sup>7</sup>.

<sup>18</sup> In *Kalb v. Feuerstein*, 308 U. S. 433, 438-439, what is almost the converse was stated: "It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally."

<sup>19</sup> See note 16.

<sup>20</sup> At the Hearings on the Chandler Act Mr. Weinstein stated: "It is advisable that the court which is considering the proceeding of a parent corporation should also have before it the proceeding of the subsidiary, because there may be these interrelations and connected interests, and the plans offered by them, respectively, may be carried forward concurrently." Hear-

administration of an estate should be centralized in a single reorganization court.<sup>21</sup> If the reorganization forum lacked the power to stay the bankruptcy proceeding and thereby to prevent a collateral inquiry into its own jurisdiction, this policy of Congress would be frustrated; for instead of one court's having "exclusive jurisdiction of the debtor and its property, wherever located,"<sup>22</sup> there would be two courts each with a claim to jurisdiction and each denying the other's jurisdiction. We may not construe the Bankruptcy Act as permitting such a state of affairs.

In view of the disposition we make of the cause it is unnecessary to take specific action concerning petitioners' motion, submitted in their reply brief, relating to certain matters affecting the state of the record.

The judgments are reversed and the causes are remanded for further proceedings in conformity with this opinion.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

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ings before the Committee on the Judiciary, House of Representatives, on H. R. 6439, Subsequently Reported as H. R. 8046, 75th Cong., 1st Sess., 136. See H. Rep. 1409, 75th Cong., 1st Sess., 41; S. Rep. 1916, 75th Cong., 3d Sess., 25. Cf. *In re Associated Gas & Elec. Co.*, 11 F. Supp. 359, 373-374, a Section 77 B case, holding that although subsidiary corporations had not filed petitions in the parent's reorganization, "It does not follow, however, that the court has no jurisdiction to restrain subsidiaries over whose action the debtor company has control, from so dealing with their assets as to dilute the equity of the debtor company and thus, to endanger the interests of creditors on whose behalf the jurisdiction of the court was invoked."

<sup>21</sup> See *Mar-Tex Realization Corp. v. Wolfson*, 145 F. 2d 360, 362-363.

<sup>22</sup> § 111, 11 U. S. C. § 511. The section reads in full: "Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

Section 118, 11 U. S. C. § 518, provides, however: "The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district regardless of the location of the principal assets of the debtor or its principal place of business if the interests of the parties will be served by such transfer."